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The Solicitors' Journal

[Established 1857.] [Registered as a Newspaper.]

VOL. LXXIX. No. 51 [Pages 949 to 972]. Saturday, December 21, 1935. Published Weekly. Price One Shilling.

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The Solicitors' Journal

VOL. LXXIX. **Saturday, December 21, 1935.** No. 51

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Current Topics.

Trial by Peers: Prospects of Abolition.

THE system whereby peers charged with treason or felony must be tried by their equals in status according to the dictates of Magna Carta appears to be in some prospect of coming to an end. Questions directed to the intentions of the Government in the matter were recently asked in the House of Commons, and in answer to them and to another question asking if he would consider taking steps "to secure the uniform administration of the law as between peer and commoner," the Attorney-General said that he would prefer to postpone any statement as to new legislation until the matter could be further considered. "I am not aware," Sir THOMAS INSKIP continued, "of any matter in which the administration of the law is not uniform as between peers and commoners charged with an offence, except that in cases of treason, murder and felony a peer has the somewhat doubtful privilege of being tried by his peers." In reply to a further question, the Attorney-General said he understood that the charge to public funds in connection with the recent trial of a peer who was pronounced "not guilty" on a charge of manslaughter which arose out of a motoring accident, would be in the neighbourhood of £700. Meanwhile LORD SANKEY has given notice that on the first Tuesday after the Christmas Recess he proposes to move in the House of Lords that "the present system of trial of peers by peers has outlived its usefulness."

Impersonal Payees.

IN the recent case of *North & South Insurance Co.* v. *National Provincial Bank*, 52 T.L.R. 71 (mentioned at 79 SOL. J. 847), Mr. Justice BRANSON had to consider the legal effect of a document drawn in the form, "Pay cash or order," the words "or order" being printed and the word "cash" being written. After an elaborate discussion of the numerous cases which the freakishness of drawers of cheques have given the courts for elucidation, the learned judge came to the conclusion that the document was not a cheque, but was simply a direction to pay cash to bearer. For a long time it has been the practice, not a very good one, we submit, for cheques, or what are called such, to be drawn in an impersonal form, no payee being named, but some word is used to indicate the purpose for which the document has come into existence, as "wages" or "cash," and these have been treated as payable to bearer, although in the "Questions on Banking Practice" of the Institute of Bankers, on a query as to the propriety of such documents, the cautious answer is given that "a banker is not justified in treating such a cheque as payable to bearer under s. 7, sub-s. (3), but it may possibly be treated as a bearer cheque on the ground that it is obviously not capable of indorsement." The precise point never seems to have previously come before our courts, but there is a Canadian case—*Judmaier* v. *Standard Bank of Canada* (1927), Western Weekly Reporter 270—where the question was considered, and it was held that such a document was a cheque payable to bearer and that an indorsement was unnecessary. As was said in that case: "Where an impersonal payee is named it is clear that an indorsement by such payee is impossible. It follows that the use of a word such as 'cash' to designate an impersonal payee who cannot indorse, followed by the words 'or order' indicating negotiability, shows an intention that the instrument shall be negotiable without indorsement, in other words, that it shall be payable to bearer." Impersonal payees are always to be deprecated as giving rise to unnecessary doubts, but what is to be said of those in which the publisher of James Payn's novels indulged, namely, making the cheques sent to the novelist made out, not in his name, but in the name of the particular work of fiction for which the payment was being made. Payn tells us that this practice sometimes put him in an awkward position, as when he presented one of the cheques which was made out to the "Family Scapegrace," or that other made out to "Found Dead," the latter of which when he presented evoked from the cashier the remark, "It is very fortunate, sir, that this cheque is not payable 'to order' or it would have had to be indorsed by your executors." Dickens, when told of this, declared, "I should not like to have much money at a bank which keeps so clever a clerk as that!"

Police Representation in Motoring Cases.

WHAT is described as "the lamentable lack of legal representation of the Metropolitan Police in prosecutions for serious motoring offences," was the subject matter of a recent resolution which, as stated at p. 948 of last week's issue, was passed unanimously by the Croydon County Bench. The problem is regarded by the bench as a national and not a parochial one, and a tentative suggestion is made of a way in which the costs of legal representation in such cases might be met. Almost the entire proceeds of fines inflicted by petty sessional courts, it is stated, are paid over to the Exchequer to the credit of the Road Fund (see Road Traffic Act, 1930, s. 117). During the last quarter at the court in question, of the total sum collected in respect of fines and fees, no less than 65 per cent. was paid to the Exchequer, and it is urged that the costs aforesaid might well form a charge on these sums. That the authorities responsible to the public for the proper detection and prosecution of offenders should permit cases of the character envisaged—particularly those of dangerous and careless driving—to be presented "in the haphazard manner in which they now are" is regarded as extraordinary, and not fair to the court, its officers, or the general public. "Before 1931," the resolution continues, "the legal organisation was adequate, but at the end of that year it was reduced, apparently

as a measure of economy. Whatever may have been the original intention, it is a fact that from that time the number of cases of dangerous and careless driving before this court in which the police have been legally represented has been so small as to be practically negligible." So far as the court in question is concerned the best, it is intimated, has been done to minimise the resulting difficulties, but the bench have felt it their duty ou several occasions to call attention in public to what is described as the unsatisfactory state of affairs. The activities of the bench directed to securing a better state of affairs are indicated, and the complaint is made that any steps which may have been taken have not led to that court. "Our representations," it is said, "appear to have been ignored." Whatever may be the rights and wrongs in this particular instance, it is clear that adequate police representation in cases of the nature here indicated is an important factor in securing the punishment of those offending against the canons of road safety. Such representation is, moreover, a pre-requisite of the vigorous campaign against driving offences, the significance of which in view of the continued seriousness of the toll of the road was alluded to in a recent paragraph in this column.

Block Grants.

A NUMBER of interesting suggestions and criticisms relating to the present system of block grants set up by the Local Government Act, 1929, were made at the recent special conference convened by the Institute of Municipal Treasurers and Accountants. It will be remembered that the apportionment between the various administrative counties and county boroughs is determined in the light of the "weighted population," factors of which are the population of the area, the rateable value of the area, the number of children therein, the number of the unemployed, and the density of population for every mile of public road. The Act makes provision for re-calculating the "weighted population" at the beginning of each fixed grant period, and for an investigation into the working of the whole system, and the discussion of the conference above referred to is regarded as specially important in view of the pending review by the Minister of Health. One speaker said that the existing formula had never been accepted with satisfaction by anyone. The fact could not be ignored that several county boroughs received less grant in the second period than in the first, in spite of increased unemployment and increasing calls on public assistance funds; and, although in some county boroughs unemployment had increased, population had decreased, resulting in decreased grants. The growth of population in other areas, which invariably carried with it a certain measure of increased participation in grants was exhibited as affording a partial explanation of such anomalies. The same speaker advocated the introduction into the formula of a new factor, based on public assistance expenditure per head of the population or per pound of rateable value. Such a factor would, it was urged, do something towards giving assistance to the places needing it most, which was not satisfactorily done under the present scheme. Industrial de-rating was not regarded with much favour; it was in the nature of a subsidy which should not be mixed up with other matters by inclusion in the pool.

Capacity to Pay.

ANOTHER speaker urged that the pre-1930 position should not be forgotten, and that any improvement of the present formula must be based on the needs of the area and its ability to pay. The rateable value factor in the formula aimed at measuring the capacity to pay, and they would approach nearer to this ideal if they had uniformity of rating throughout the country. The chief financial officer of an urban district council dealt with the question of the distribution of the county apportionment between county districts and county councils (the central authority, of course, only deals directly with county and county boroughs in this matter). At present the population of the various county districts is the determining factor of the share they receive of the county apportionment, subject to the non-county and urban district authorities receiving, in proportion to their populations, five times the amount distributed to the rural district councils. The last-mentioned speaker urged that it was essential that a comparison with the pre-1930 position should be made if any new basis was to succeed in adjusting the present position, which he described as inequitable. He suggested that the total of each county apportionment should be divided between the county council and separately rated areas within the county in proportion to their rate-borne expenditure during the preceding fixed grant period. Objection to the present system was not universal, one speaker expressing the hope that the principle of the block grant and its distribution would not be upset. They ought, he said, to make it a strong point that when fresh services were put on the local authorities Parliament should provide the means for carrying them out.

Planning and Housing Co-ordination.

IN the course of a lecture delivered early in the present month, and reported at p. 970 of this issue—the last of the 1935 Chadwick Public Lectures—Dr. R. C. MAXWELL, Past President of the Town Planning Institute, made a number of significant observations regarding the relationship existing between housing and town and country planning activities. Taking as his subject: "Town and Country Planning and the Housing Act of 1935," he stated that a unique opportunity of co-ordinating and promoting town and country planning, and of promoting the garden city movement, was now afforded by the Housing Act of 1935, in conjunction with the powers available under the Housing Act of 1930 and the Town and Country Planning Act of 1932. The generality of the words in the opening section of the last-named Act—which, it may be remembered, enables a scheme to be prepared with respect to any land, whether there are or are not buildings thereon, with the general object of controlling the development of the land comprised in the area to which the scheme applies, of securing proper sanitary conditions, amenity and convenience, and of preserving existing buildings or other objects of architectural, historic or artistic interest and places of natural interest or beauty, and generally of protecting amenities, whether in urban or rural portions of the area—envisages what the speaker described as a fine ideal somewhat restricted by later provisions of the same Act, the effect of which is to exclude areas which show no sign of development or change. It was stated, however, that in practice the restriction has not so far caused difficulty, the whole of London, Manchester and Birmingham being cited as examples of built-up areas included with a view to the preparation of schemes. The present general position was indicated by the fact that over 15,640,000 acres of land, or more than two-fifths of England and Wales, are covered by planning resolutions or schemes, some 900 local authorities having prepared or being engaged in preparing such. It was pointed out that county councils, although not, except in the case of the London County Council, ordinarily planning authorities, are empowered to assist financially, and that in more than twenty counties arrangements have been made for the preparation of schemes on a county basis, generally by means of the establishment of executive joint committees comprising representatives of the county and of the county districts within it.

Questions of Policy.

IN outlining his suggestions relating to general policy the speaker alluded to the danger that, under pressure of the "five years" plan for the abolition of slums, schemes of demolition and re-housing may be made and carried out without regard to planning considerations or effective co-operation with the planning authority. The activities likely to follow the requirements relating to re-development contained in the Housing Act, 1935, were outlined, and in view of the combined powers of this, the Act of 1930, and the Town and Country

Planning Act, 1932, including in particular the wide powers local authorities have of purchasing land under these and other Acts, and also of purchasing land in advance of requirements, the speaker submitted that local authorities have now an opportunity which may never recur of re-planning and re-developing their urban areas and centres, and of fitting in such re-development with a general planning scheme. A bold policy is advocated. Hitherto, Dr. MAXWELL stated, planning has been largely on restrictive lines. Progress can only be achieved by more positive planning. "Model schemes with plans of different possible types of planning and re-development might," it was suggested, "be issued, together with practical advice, based on existing conditions." The speaker went on: "Further, would not the local authorities welcome visits from officers of the department (the Ministry of Health) with practical knowledge and diplomatic qualifications to confer with representatives of the local committees concerned—the town planning, housing and public health committees?" Fear of incurring unknown liabilities, and the semi-independent character and working of the existing committees were each exhibited as obstacles to progress. On the former point it was thought that there was much unnecessary misapprehension, while the fact that money is cheap, favouring the raising of loans, and the still serious amount of unemployment in the building trade was also alluded to in this connection. On the latter point it was suggested that a sound planning re-development and housing scheme under the cumulative powers of the recent Acts can be made only under and in pursuance of a master plan by one committee, whether appointed *ad hoc*, or consisting of representatives of the other committees concerned—the detailed work under such plan being relegated to the particular committee concerned with that branch of the work. The employment of a specialised staff was also advocated.

Water Supply.

WE have on former occasions alluded to the problem of water supply, particularly as it affects rural areas. Recently the Minister of Health indicated that it was his intention to suggest shortly the re-appointment of the joint committee of both Houses of Parliament to consider measures for the better conservation of water resources and supplies in this country. There was, he said, no intention thereby to delay action, and he hoped that before the present Parliament had run its course something very substantial would have been achieved. Sir KINGSLEY WOOD was proposing "The Institution of Water Engineers" at a dinner at which Mr. H. J. F. GOURLEY, the president of that institution, was in the chair, and observed in the course of his remarks that recent experience would have shown his hearers that in a number of cases more efficiency and economy could be effected by co-operation between undertakers and the users in the sources of supply and distribution, while he expressed the hope that they would look well ahead with a view to co-ordinating schemes for future needs. He attached great importance to the formation of regional advisory committees. Acknowledging the toast, Mr. GOURLEY said that what was required was a comprehensive survey of all the resources available which would provide valuable data for a long term policy. That would cost money, and he hoped the Government would press forward vigorously in this direction. These speeches were duly reported in *The Times*, 7th December, which also referred to a written reply sent by the Minister to Sir PERCY HURD, M.P., on the subject of rural water supply. According to this statement, good progress is being made generally in rural areas in providing water supplies still needed. State grants totalling £800,000 have been provisionally allocated for schemes for 1,660 parishes involving an estimated capital cost of nearly £5,000,000. In addition, since 1st April, 1934, loans to the amount of £1,170,000 have been sanctioned for schemes for 400 parishes proceeding without grant from central funds.

Recent Decisions.

IN *Silcock and Sons* v. *Green* (*The Times*, 5th December), it was held that a notice to treat for the sale of land upon which stood a partially erected building was bad on the principle applicable in such cases where existing buildings are in question, that a contract between owner and builders for the erection of the said building had not been frustrated by the notice, and therefore that damages were awardable for breach of contract on the owner requiring the builders to discontinue their work.

In *Trickett* v. *Queensland Insurance Co. Ltd. and Others* (*The Times*, 10th December), the Judicial Committee of the Privy Council upheld the decision of the Court of Appeal of New Zealand to the effect that the appellant's claim for £1,000 under a motor policy in respect of the death of her father, who was killed in an accident, was ill founded. When the accident occurred the car was being driven at night without lights. The words "to the knowledge of the driver" could not, it was held, be imported into a condition absolving the company from liability while the vehicle was being driven in a damaged or unsafe condition. A contention based on certain dicta of GODDARD, J., in *Barrett* v. *London General Insurance Co.* [1935] 1 K.B. 238, assimilating the position of a ship at sea with that of a motor car on land was likewise negatived. The dicta were disapproved, although the conclusions reached by the learned judge on the facts before him was not questioned.

In *Williams* v. *Neath Assessment Committee* (*The Times*, 11th December), a Divisional Court reversed a decision of the Glamorganshire Quarter Sessions and held that the portion of a hereditament utilised as a sub-post office was not exempt from rateability. This brings out the distinction existing for this purpose between the position of a sub-postmistress—who, it was held, was neither a servant nor an agent of the Postmaster-General, but an independent contractor who had agreed on terms to carry on on her own premises certain business connected with the postal services—and that of a person who is a servant or agent of the Crown.

In *Eyre* v. *Milton Proprietary Limited* (*The Times*, 11th December), EVE, J., held that the expression "shall be determined by ballot" occurring in one of the articles of association of a company in relation to the retirement of directors meant that the question was to be determined by a vote of the directors to be decided by the majority and not by lot. The Court of Appeal reversed this decision (*The Times*, 19th December) and held that the meaning of the "ballot," having regard to the precise language used and the practical considerations, was "lot."

In *Witty* v. *World Service Ltd.* (p. 966 of this issue), a motion which was brought to obtain a decision whether a newspaper competition contravened s. 26 (1) of the Betting and Lotteries Act, 1934, and which the parties agreed to treat as the trial of the action. The question in issue arose out of a series of nine sketches representing names of places as spelt or pronounced. Space was given for five separate solutions and answers were to be accompanied by a small remittance. EVE, J., held the six pictures the solution of which was doubtful involved a considerable degree of skill in solving and that the competition was not within the section aforesaid; nor was it a "game" within s. 1 of the Betting Act, 1853.

In *McPherson* v. *McPherson* (*The Times*, 17th December), the Judicial Committee of the Privy Council dismissed a wife's appeal to have decrees *nisi* and absolute obtained against her by her husband set aside as void. The husband subsequently married the wife of the co-respondent, who herself divorced her husband. The petition was heard in the Judge's Library, and there had, it was held, been an inroad on the rule of publicity which must be condemned so that it should not again be permitted. The Board held that the decrees in question were, as a result, voidable and not void, and that the time for avoiding them was past, the petitioner having re-married and being entitled, as was his wife, to the protection afforded by s. 57 of the Matrimonial Clauses Act, 1857.

Consumer's Action against Retailer and Manufacturer.

A MAN buys an article in a retail shop—" a harmless proprietary medicine, an ointment, a soap, a cleaning fluid or cleaning powder "—in the form in which it has left the manufacturer. There is " no reasonable possibility of intermediate examination " and it is obvious that " absence of reasonable care in the preparation or putting up of the products will result in an injury to the consumer's life or property." The manufacturer owes a duty direct to the consumer; and if, through breach of that duty, the consumer is injured in the use of the product, he can sue the manufacturer in tort, for damages for negligence.

So the House of Lords decided in 1932 in the case of *Donoghue* v. *Stevenson*, A.C., p. 562; 76 SOL. J. 396. The quotations are from the speech of Lord Atkin at pp. 583, 599. There, a lady drank from an opaque bottle of ginger-beer, bought by a friend, which contained, to her painful ignorance, the decomposed remains of a snail. The dark bottle was sealed and stoppered before consumption. The lady suffered shock and severe gastro-enteritis and it was held that an action lay against the manufacturer.

How far does this principle go and when may a solicitor advise his client to join the manufacturer in an action against the retailer?

The principle has very recently been applied where an Australian doctor contracted dermatitis from wearing woollen underwear in which free sulphite had been negligently allowed to remain in the manufacture. The Judicial Committee held that he could recover the damages awarded, £2,450, both as against the retailer for breach of an implied condition, and as against the manufacturers for negligence.

The case of *Grant* v. *Australian Knitting Mills, Limited* (1935), 52 T.L.R. 38; 79 SOL. J. 815, explains very clearly the principle laid down in *Donoghue's Case*. These two authorities together contain the rights of the consumer and the duties of the manufacturer.

On June 3rd, 1931, Dr. Grant bought from the retailers two pairs of underpants and two singlets. He put on one suit on June 28th, and felt itching at the ankles. On July 5th he put on the other set. The first set was washed and the following week he put on the washed set. The skin trouble got worse and on 13th July a dermatologist advised him to discard the underwear. He was confined to bed from 21st July for seventeen weeks. In November he became convalescent, and went to New Zealand to recuperate. The following February he returned, but he suffered a relapse in March and from April to July he was in hospital. In April, 1932, he issued a writ and in November the action was heard. First, it was found that the disease was of external origin, for dermatitis internally produced is very uncommon.

Next it was found that the plaintiff's skin was normal and he had no " peculiar susceptibility." He was not " sensitive to the mechanical effects of wool."

It followed, therefore, that the outbreak came from the garments. The inflammation began in the ankle ten hours after the pants were first put on. It was admitted that the garments contained sulphur dioxide, which indicated free sulphites. These, if sufficient, may combine with the sweat secreted to form sulphuric acid which can produce dermatitis.

The manufacturers gave evidence of the six processes through which the webs were put, which were properly applied, and were bound, they said, to be effective. In the previous six years nearly 5,000,000 of these garments had been sold without complaint. But " some employee may blunder," the Committee said.

Although it was not possible for the plaintiff to prove affirmatively that the garments contained an excess of free sulphites, yet, as Lord Wright said, delivering the judgment of the Committee :—

> " Pieces of evidence, each by itself insufficient, may together constitute a significant whole, and justify by their combined effect a conclusion " (p. 41).

" The coincidences of time and place and the absence of any other explanation " pointed in favour of the plaintiff.

I. Accordingly, the retailers, in the first place, are liable. And this, on two grounds :—

(1) The one ground was s. 14 (1), Sale of Goods Act, 1893—or rather, the identical clause in the relevant Australian statute.

Where the buyer makes known to the seller the particular purpose for which he requires the goods, so as to show that he relies on the seller's skill or judgment and those goods are of a description usually supplied by the seller in the course of his business, there is an implied condition that the goods are reasonably fit for that purpose. There is no need for the buyer to say in terms to the seller: I rely upon your judgment. It is sufficient if the reliance is " brought home to the mind of the seller." When a man goes into a good retail shop he expects " that the tradesman will have bought the right goods of a good make " (p. 42). Nor need he specify, in terms, " the particular purpose." Sometimes, as here, the particular purpose is the only purpose: wearing the garments next the skin.

(2) The second ground of the retailers' liability is s. 14 (2).

Where goods are bought " by description " from a seller who deals in goods of that description, there is an implied condition that the goods shall be " of merchantable quality." If, however, he has examined the goods, there is no implied condition as regards defects which he ought to have discovered. " ' Merchantable ' does not mean that the thing is saleable in the market simply because it looks all right." If it has fundamental defects it is, although " saleable," nevertheless not " merchantable." Such was the plight of the pants. However, they must be merchantable as sold and delivered—in this case, in an unwashed state. The sale is still one " by description," even though the buyer sees and identifies the article —

> " so long as it is sold not merely as the specific thing but as a thing corresponding to a description—for example, woollen under-garments, a hot-water bottle, a second-hand reaping machine . . ." (p. 42).

II. What, in the next place—independently of any question of contract—was the liability of the manufacturers?

There was no contract between consumer and producer, and liability, if any, must arise from negligence which was inferred from the defects combined with the circumstances.

But negligence first assumes the existence of *a duty to take care*. Did the manufacturer owe this duty to the ultimate consumer, and if so, why?

1. In *Donoghue's Case* a duty was deduced from the facts : " the injured party was one of a class for whose use, in the contemplation and intention of the makers, the article was issued to the world, and the article was used by that party in the state in which it was prepared and issued without it being changed in any way and without there being any warning of, or means of detecting, the hidden danger " (p. 43).

Now, to create a duty of this kind, " no interchange of words " is necessary; " no signs of offer or assent." Nor need there be any consideration passing from consumer to manufacturer. It does not matter how many intermediate sales there are, nor how much " intervening handling." Nor is it to the point that the consumer lives many thousands of miles away from the manufacturer, nor that control has passed from him.

The duty, then, is deduced from the facts. A man who has received money paid to him under a mistake of fact must return it. The liability is laid in quasi-contract: there is no promise to repay, express or implied, but, by construction of law, the payee is deemed to have so promised. So, in this case,

the manufacturer does not know, or wish to know, the consumer. To him he makes no promise to take care, either expressly or by implication. But the law says that a duty arises on the facts, from one party to the other.

True, the thing might never be used or be destroyed, and the duty "only can become vested by the fact of actual use by a particular person." Nor did it matter that the thing was not inherently dangerous, but only became dangerous because of negligent manufacture.

But an essential element in the liability of a manufacturer is the fact that "the object is hidden and unknown to the consumer," for the plaintiff cannot complain of mischief supervening upon "his own conscious volition" (p 44).

2. Lord Wright, having analysed the elements in the decision in *Donoghue's Case*, proceeded to apply that principle to *Grant* v. *Australian Knitting Mills, Limited*:—

> Defect, "hidden and latent": the snail in the bottle;
> Its undiscoverableness: sulphites in the pants;
> No intervening change between manufacture and wearing;
> The purpose of wearing and the fact of wearing;
> Wearing in the condition in which they were sold.

True, the ginger-beer was to be drunk and the pants were to be worn.

> "No distinction, however, can be logically drawn for this purpose between a noxious thing taken internally and a noxious thing applied externally" (p. 44).

Again, the bottle was stoppered and sealed, whereas the garments would be handled by the shopkeeper and exposed to the air. The makers notionally retained their "control" over the bottle until it was consumed; the makers of the pants lost their "control" because the garments could be "tampered with" before they reached the user. But both the bottle and the pants contained their respective defects as well when they left the makers as when they reached the user or consumer.

III. (1) It is now clear that the courts are disposed to extend, rather than to restrict, the liability of a manufacturer. The articles to which this will apply appear to be "indefinite in range and certainly include articles of common household use" (per Lord Atkin in *Donoghue's Case*, at p. 583). They include not merely articles of food and drink but articles of apparel and personal use. "A manufacturer of products" is the term Lord Atkin uses (at p. 599).

(2) Although it may be very difficult for the plaintiff to prove strictly and logically which person in the factory, and in what process, was negligent, yet "the coincidences of time and place and the absence of any other explanation" may lead to a reasonable inference of negligence. The fact that the manufacturers use fool-proof process, and that they have manufactured millions of similar articles without complaint does not, of itself, negative their negligence.

(3) The plaintiff must show that the object was "hidden and latent" and that there was no possibility of detecting it by reasonable examination before the user or the consumption of the article. If he knows of its noxiousness, then the principle *volenti non fit injuria* applies. And if, before the retail sale, any further process is applied to the article by the retailer, the plaintiff will still win his case if the article contained the same defect when it left the manufacturer.

> "No doubt many difficult problems will arise before the precise limits of the principle are defined,"

said Lord Wright (at p. 44 of 52 T.L.R.), but meanwhile plaintiffs may take heart and manufacturers take care.

Mr. George Carwardine Francis, solicitor, of Chepstow, Mon., Registrar of Chepstow County Court and head of the firm of Morgan & Co., solicitors, left estate of the gross value of £50,189, with net personalty £43,627. He left £50 to Chepstow and District Hospital.

Mr. Robert Scale, retired solicitor, of Cardiff, left £39,131, with net personalty £39,022.

Company Law and Practice.

Position of Receiver and Manager with Regard to Contracts—I.

THE rights, liabilities and duties of a receiver and manager appointed by the court in respect of both contracts of the company current at the time of his appointment and contracts into which he himself enters as such receiver and manager are matters of considerable practical importance and interest. I propose in the first place to discuss his position with regard to contracts of the company which he finds existing when he is appointed.

First, as to his liability: A receiver and manager is under no personal liability on the company's contracts which are current at the date of his appointment. This was forcibly put by Cozens-Hardy, M.R., in *In re Newdigate Colliery Limited* [1912] 1 Ch. 468, at p. 474, in these words: "[The contracts] are still subsisting, but it is impossible to suggest that the receiver and manager is under any liability to the persons who have entered into them . . . They are not contracts with him; they are contracts made with the company, which is still a company and has not yet been wound up. If he discharges the obligations of the company under the contracts he will be entitled to receive the money due from the other contracting parties to the company; but to say that he is under any personal liability with regard to the contracts and that he ought to be indemnified or relieved in respect of them is entirely to misunderstand the position of a receiver and manager." In case any receiver possessing a somewhat tender conscience feels that, despite the absence of legal liability on a contract of the company current at the date of his appointment, there is a moral obligation to carry it into effect, I can perhaps reassure him by drawing his attention to the contrary view of Warrington, J., in *In re Great Cobar Limited* [1915] 1 Ch. 682, at p. 689. I need scarcely add that legal liability might arise if he effected a novation of such contracts, so as to make himself personally a party thereto.

If then a receiver has no personal liability on such contracts, to what extent can he repudiate them, and to what extent does his appointment operate automatically to determine them? The general position of a receiver in this connection was described by Lord Haldane in *Parsons* v. *Sovereign Bank of Canada* [1913] A.C. 160, at p. 167, in words which I cannot do better than reproduce: "A receiver and manager appointed [by the court] is the agent neither of the debenture-holders, whose credit he cannot pledge, nor of the company, which cannot control him. He is an officer of the court put in to discharge certain duties prescribed by the order appointing him . . . The company remains in existence, but it has lost its title to control its assets and affairs, with the result that some of its contracts, such as those in which it stands to an employee in the relation of master to servant, may, in certain cases, be determined by the mere change in possession, and the company may be made liable for a breach. But it does not follow that all the contracts of the company are determined even, to put the highest case, when a mortgagee acting under a power in his mortgage assumes control of the business of the mortgagor. The mortgagee may be in a position to say that he has authority to carry out in the name of the mortgagor contracts with a third person—e.g., for the manufacture and delivering of goods; and the third person may have no right to allege a breach on the ground of mere change of those who actually manufacture and deliver the goods for the company. Such a contract usually involves no stipulation as to the identity of those by whom the work of the company is to be performed and the legal *persona* of the company may continue to subsist. In the present case the receivers and managers were by the terms of the order of the court obviously intended to carry on the actual business of the company with as little breach of continuity as possible; and

there was no reason why they should not use the name and powers of the company for the purpose of fulfilling existing orders. It is no doubt true that *primâ facie* any new contracts they made would ordinarily be made by them personally in reliance on their right of indemnity out of the assets . . . But in the present case the contracts were contracts entered into before the receivers and managers were appointed and had been entered into in the ordinary course of the business of the company . . . ; and there is no ground for presuming that the receivers and managers intended to act otherwise than in the name of the company to carry to a conclusion the business which was current, or that they meant to repudiate the obligations of the company. In the absence of a liquidator the *persona* of the contracting company remained legally intact though controlled by receivers and managers."

It will be seen from the passage I have quoted that a receiver and manager may carry out the existing trade contracts of the company, and as I have already mentioned, he does not through so doing incur any personal liability. But the other party's existing rights in respect of the contract are not thereby prejudiced ; so that if the receiver seeks to recover on the contract he can be met by any equities or rights of set-off which subsist under the contract between the third party and the company. So in *Forster* v. *Nixon's Navigation Company Limited*, 23 T.L.R. 138, the company had contracted with the defendants to supply them with pit props over a certain period. The plaintiff was subsequently appointed by the court receiver and manager of the company on behalf of debenture-holders. He delivered a quantity of props at various times in pursuance of the contract but then gave the defendants notice that he could not undertake to carry out their contract. In an action brought by him to recover the price of the props he had supplied it was held that as he deliverered the props under the contract between the company and the defendants and not under a new contract he could only recover subject to the right of the defendants to set-off any claim which they might have against the company arising out of the same matter, and the defendants were consequently entitled to set-off as against the plaintiff's claim the difference between the contract price and the market price of the props not delivered. Again in *Parsons* v. *Sovereign Bank of Canada*, *supra*, the receivers and managers appointed in a debenture-holders' action had supplied goods to the appellant under contracts with the company subsisting at their appointment, but subsequently had cancelled the contracts. In an action brought to recover the price of the goods so supplied the appellant claimed to set-off the amount of the damages for the breach of the contracts. It was held that they were so entitled to do, inasmuch as the amount sued for was under the old contracts with the company which was responsible for the breach and not under new contracts with the receivers.

A receiver and manager, though he can carry out the company's current trade contracts, is entitled to refuse to fulfil those contracts, and, as *Parsons' Case*, *supra*, shows, the other party to the contract may, as a result, have a claim against the company for damages for breach of contract. But there is an important restriction on his right to repudiate current contracts : inasmuch as it is his duty to preserve the whole of the property that is put in his care for the benefit of all persons interested therein, he must not indulge in a wholesale repudiation of contracts, which would have the effect of damaging the goodwill and undertaking of the company as a whole. In *In re Newdigate Colliery Limited* a receiver and manager of the undertaking and property of a colliery company had been appointed in a debenture-holders' action. The company had entered into a number of contracts for the supply of coal which would exhaust its current output, and, since the contracts were made, the price of coal had risen, so that if the contracts were disregarded a much larger sum would be obtained for the coal. The receiver sought the court's sanction to disregard the contracts, but this was refused. The effect, it was pointed out, of allowing him to do so would be practically to discontinue the company's business and ultimately to sacrifice the value of its undertaking, which was a part of the debenture-holders' security. It would increase the amount of the company's unsecured liabilities, and would be enhancing the value of one asset (the coal) for the benefit of the debenture-holders at the expense of unsecured creditors, who would find the value of the company's undertaking depreciated. It was the duty of the receiver to do everything reasonable and right for the protection of the property as an undertaking and for the benefit of all the persons interested in it.

Two cases where the principle laid down in *In re Newdigate Colliery Limited*, *supra*, was held to be inapplicable are worth noting. The first is *In re Thames Ironworks Shipbuilding and Engineering Company Limited* [1912] W.N. 66, where Parker, J., refused to sanction a borrowing to complete a contract for the building of ships since no direct profit would result, nor even any indirect profit, there being a charge for a large amount having priority to the debentures. The other is *In re Great Cobar Limited* [1915] 1 Ch. 682, where Warrington, J., gave leave to a receiver and manager to disregard an agreement entered into by the company appointing sole agents for the sale of the company's produce, on the ground that the agreement in no way affected the value of the goodwill of the company's business. It will be observed that in these cases the court was asked to sanction not the wholesale repudiation of the company's contracts but the repudiation of specified contracts which the evidence showed to be of no value to the company's undertaking as a whole.

Next week I hope in concluding this topic to discuss the effect of the appointment of a receiver and manager on service contracts and the liability of a receiver in respect of contracts into which he enters as such.

A Conveyancer's Diary.

Consolidation of Mortgages. —*continued.*

Pursuing the subject which I dealt with last week, I think that I cannot do better than refer to the case of *Cummins* v. *Fletcher* (1879), 14 Ch. D. 699. That was a building society case and so is the more pertinent to the matter which I have already discussed, but is of general application regarding the consolidation of mortgages.

Perhaps I may say, in passing, that neither in the paper read before the National Association of Building Societies nor in the discussions which followed did Mr. Hill refer to this case, although he did express an opinion which was in direct conflict with it. That being so, I think that it will be best if I set out the head-note to the case so far as material.

In 1871, V, being the owner of shares in a building society and entitled to an advance in respect thereof, conveyed property to the trustees to secure the sum advanced, with provisos for redemption, and that if he paid them the sum named monthly for twelve years, and all sums which might become due on the shares, the security should determine and the trustees should indorse a receipt on the deed. In 1874, V and N, co-partners, being the owners of shares in the society and entitled to an advance in respect thereof, conveyed partnership property to the trustees to secure the sum advanced, with provisos on redemption, and if they, or either of them, paid the sum named monthly for fourteen years, and all sums which might become due on the shares, the security should determine and the trustees should indorse a receipt on the deed. In 1875, V and N, as debtors, and V, as surety, conveyed to their bankers part of the property comprised in the deed of 1871 to secure all moneys due from the firm. V and N went into liquidation and trustees were appointed thereunder. Default was made in payment of the

monthly instalments secured by the deed of 1874 and arrears became due to the society. The bankers entered into possession and receipt of the rents of the property mortgaged to them. They paid to the society the monthly instalments secured to them by the deed of 1871, and in 1878 gave notice to the trustees of the society that they, in accordance with the rules of the society, desired to redeem the property comprised in the deed of 1871, but the trustees refused to allow them to do so unless they also redeemed the mortgage of 1874, and brought an action for a declaration that they were entitled to consolidate their securities.

It was held by the Court of Appeal that consolidation only applies where default has been made on all the securities in respect of which it is claimed; and that, therefore, as there had been no default on the 1871 mortgage, the plaintiffs were not entitled to the consolidation they claimed.

The decision in that case seems to me to be conclusive of the whole matter. It may, however, be useful to consider the grounds upon which it is based.

In the first place, it is to be gathered from that decision, and indeed from a line of authorities, that the right of consolidation is a purely equitable right. James, L.J., in the course of his judgment, said: "The whole doctrine of consolidation, whatever may have been the particular circumstances under which it has been applied to different cases, arises from the power of a Court of Equity to put its own price upon its own interference as a matter of equitable consideration in favour of any suitor. At law, independently of any legal estate, when the power of redemption given by original contract is gone, then a person comes into equity to have assistance from the Courts of Equity and asks to redeem upon what are called equitable considerations, and then the Court of Equity says: 'This is the price upon which we give you the relief you seek, namely, on your paying all that is due.'"

Then his lordship put the converse case of a foreclosure action and stated the grounds upon which such an action rests in equity, and continued: "The Court of Chancery had, and this court has, no more right because there was an insufficient security given for the one debt, to take the sufficient security, as to which there has been no default at all, or no occasion to apply to the Court of Equity, than a man has the right to go and take another man's stock-in-trade or chattels or horses or anything else . . . But it seems to me that where a man has a legal right in property A and an equity of redemption in property B, which is an insufficient security and has no occasion, and never will have any occasion, to come to a Court of Equity with respect to property A, the fact of the two properties being subject to two mortgages, gives the court no more power to take from him property A than it has to take any other property belonging to him, for the purpose of sabotaging the debt for which there is an insufficient security."

I cannot help thinking that Mr. Hill and others who, apparently, agree with him, labour under the delusion that the doctrine of consolidation has the effect of charging a mortgage debt originally charged upon one property upon all other properties charged by the same mortgage or in favour of the same mortgagee. That simply is not so.

It might be possible for the object which Mr. Hill has in view to be achieved by making every mortgage to a building society cover further advances to the same mortgagor, whether secured by further security or not. That might lead to inconvenience in practice, especially as regards stamp duties.

Another possible method would be to adopt the form usual in the case of a "private" mortgage, where the repayment is intended to be by instalments. That is, make the principal payable at a fixed date, say, six months ahead, and provide that if the mortgagor paid the principal by certain instalments the mortgagee would accept payment in that way, but that for all the purposes of the L.P.A., 1925, the mortgage money should be deemed to be payable on the fixed day. I know of no authority on that point, but I doubt whether a judge of the Chancery Division could be induced, in such a case, to hold that the mortgage could be consolidated with others from the same mortgagor if there had been no default in payment of the instalments. The principles enunciated in *Cummins* v. *Fletcher* would seem to apply.

A third course would appear to be to insert in the mortgage an express agreement to the effect that the society should have the power to consolidate the mortgage with any other from the same mortgagor, whether the legal right to redeem had lapsed or not. In other words, to express in the mortgage a contract which Mr. Hill seeks to imply from the clause exceeding the operation of s. 93 (1) of the L.P.A., 1925. Even so, I do not see how such a contract could be enforced except in equity. Resort must necessarily be had to the Chancery Division to enforce such a contract, and, again, I do not see how the court could do that if, in fact, the mortgagor was not in default in respect of the mortgage in which the contract was contained.

It must be remembered that building societies are in some respects very favoured and can impose upon those who borrow from them conditions which could not be inflicted upon borrowers from a private mortgagee, and that, by the simple process of making every borrower a "member" *ad hoc* of the society. The result of that is that the borrower has not only to pay his principal and interest and costs, but also has to pay subscriptions and perhaps fines, and to that extent has to pay subscriptions and perhaps fines and a redemption fee.

Now, it seems that the building societies, in addition to their other privileges, seek to have a right of consolidation not, so far, claimed by any mortgagee, and appear to think that they are badly used because they cannot have it.

Landlord and Tenant Notebook.

Tenancies and Leases not under Seal: Rights of Assignee of Reversion.

One thing a little-noticed provision of the L.P.A., 1925, namely, s. 154, has effected (and, perhaps, not deliberately) is to clear up the position of an assignee of the reversion of a tenancy agreement not under seal as regards the tenant's covenants, a position which must have seemed uncertain to many practitioners.

It was the statute known as 32 H. VIII, c. 34, which first gave assignees of reversions the right to sue for rent and breach of covenant. It was clear, however, that the enactment applied to leases under seal only. When the Conveyancing Act, 1881, s. 10, was passed, providing that "rent reserved by a lease, and the benefit of every covenant or provision therein contained, having reference to the subject-matter thereof, and on the lessee's part to be observed or performed . . . shall be annexed and incident to . . . the reversionary estate . . . and shall be capable of being . . . taken advantage of by the person from time to time entitled, subject to the term . . ." the idea seems to have got about that assignees of reversions to land held under tenancy agreements under hand were included. And several decisions recognised this idea, and applied it; but one always felt that it was not altogether sound, and was the sort of proposition that might well be negatived by the House of Lords if that tribunal got the chance.

One authority in which the question was touched upon was *Manchester Brewery Co.* v. *Coombs* [1901] 2 Ch. 608, in which purchasers of a reversion enforced a "tie" against the publican tenant. But, apart from the fact that the defendant held under an agreement for a lease of which specific performance would have been ordered, the plaintiffs could have succeeded

on the ground of express notice of the assignment given by them.

Rickett v. *Green* [1910] 1 K.B. 253, concerned the forfeiture of the residue of a three years' term, created by agreement, six days before its commencement, under hand only; and while the Divisional Court upheld the decision of the county court judge that s. 10 of the Conveyancing Act applied, the agreement again being one of which specific performance would be decreed, and this was necessary for the judgment, the real argument in the case centred round the question of proving that insufficient distress was available so as to satisfy the County Courts Act, 1888, s. 139.

Then came *Wedd* v. *Porter* [1916] 2 K.B. 91, C.A., which raised the question of the liability of a farm tenant, who had held over, towards his new landlord; but here the question was limited to the covenants implied by law.

This was followed by a decision of great importance in this matter, *Blane* v. *Francis* [1917] 1 K.B. 252, C.A. A seven-year lease, containing a tenant's covenant to keep and leave the premises in good repair, had expired in March, 1899, and the tenant had held over. He was succeeded by his widow in 1905; in 1914 the freehold was sold to the plaintiff. Notice to quit was given and expired, and the action was then brought on the covenant to repair contained in the original lease and implied in the yearly tenancy created by holding over. It was held that s. 10 of the Conveyancing Act, 1910, did not help the plaintiff; but what I respectfully criticise is the way in which the judgments are expressed. Swinfen Eady, L.J., it is true, practically limited himself to saying that the section was not applicable to an agreement not in writing, and appeared carefully to avoid implying approval of the proposition that if there had been a written but unsealed document, the position would have been different. But Bankes, L.J., said that the language of s. 10 was appropriate, and appropriate only, to an instrument in writing; and the learned judge referred for support to s. 18 (17) of the Act, which expressly extends the meaning of leases in the section (dealing with mortgagors' powers) to agreements "whether in writing or not." Lawrence, J., said that the words of s. 10 pointed, naturally, to a document "under seal or in writing"—and then spoke of "unwritten agreement" and "parol tenancy" as convertible terms!

The effect of the above authority was to make a threefold division where we had been taught to recognise two species only.

It is not surprising that when the case of *Cole* v. *Kelly* [1920] 2 Ch. 106, C.A., in which a holding over had been accompanied by much correspondence, and followed by a lease to the plaintiff amounting to an assignment of the reversion, was taken to the Court of Appeal on the question, *inter alia*, of what terms were implied in the new tenancy, Atkin, L.J., assumed that s. 10 would apply to any tenancy in writing, and Scrutton, L.J., observed: "This court decided in *Blane* v. *Francis* that s. 10 only applies to a lease in writing," while Bankes, L.J., said that case had *decided* that "lease" in the section in question meant *an* instrument in writing.

Finally, some thirteen days before the coming into force of L.P.A., 1925, McCardie, J., delivered judgment in the case of *Rye* v. *Purcell* [1926] 1 K.B. 446. The relevant facts were that shortly before the expiration of a lease the then landlord's agent and the tenant had discussed his staying on and had come to terms which were then put in a letter written by the agent to the tenant. (I do not know whether it was stamped!) There was no writing signed by the tenant; this, of course, is not necessary in the case of any lease. The learned judge reviewed the authorities and came to the conclusion one would expect, having regard to those authorities, namely that the new landlord was entitled to sue.

But there does seem room for doubt whether the Conveyancing Act, 1881, s. 10, ever meant to confer such rights. And one wonders whether the conclusion in the last mentioned case would have been the same if the letter had been written after holding over had commenced; say just before the conveyance to the plaintiff.

L.P.A., 1925, s. 141, replaces and repeats the provisions of, the Conveyancing Act, 1881, s. 10; but s. 154 now tells us what is meant. "This Part of the Act, except where otherwise expressly provided, applies to leases created before or after the commencement of this Act, and 'lease' includes an underlease *or other tenancy*."

This, I think, disposed of the prospect—or danger, if you will—of *Cole* v. *Kelly*, *supra*, being over-ruled by the House of Lords; and also obviates all necessity of any express assignment and notice thereof of rights under covenants as choses in action.

Our County Court Letter.

RECOVERABILITY OF GOLF SUBSCRIPTIONS.

In *Jackson* v. *Watkins*, recently heard at Scunthorpe County Court, the claim was for £4 4s., as a subscription to the Holme Hall Golf Club. The plaintiff's case was that he was secretary of the club, the rules of which provided that a member remained liable, unless he gave notice of resignation within fourteen days of the end of the financial year. On pleading ignorance of the rule, and also that the non-payment was an oversight, the defendant had been offered the alternative of a summer subscription, but had not accepted the offer. He had also written to the committee that they did not desire his membership so much as his subscription, and their insistence on the letter of the law was inappropriate to a golf club. The defence was that the claim was not enforceable, as persons signing forms of application for membership did not contemplate incurring any legal liability, i.e., they were entering into a mere social and not a legal contract. His Honour Judge Langman held that membership of a golf club was a legal contract. It might be that the committee had written off other unpaid subscriptions, as alleged by the defence, but this did not mean that they had forfeited the right to enforce the rules, when they chose. Judgment was given for the plaintiff, with costs.

THE RIGHTS AND LIABILITIES OF HAIRDRESSERS.

In the recent case of *Goulding* v. *Maison Gerrard*, at Bournemouth County Court, the claim was for £29 10s., as damages for negligence. The case for the plaintiff was that, while having a permanent wave, she found the apparatus became very hot. An assistant put some cotton wool underneath, but the scalp was burned, and a bald spot had appeared, owing to the destruction of the roots of the hair. The manageress had subsequently offered to pay the doctor's bill, and, if the hair did not grow within three months, £5 as compensation. The defence was that the plaintiff had expressed her satisfaction, on paying her bill of one guinea. A written complaint was received a month later, and the proprietress of the defendant firm offered to clean the alleged wound with lysol, but the plaintiff refused to move an oilskin pad from her head. An attempt was made to see the doctor, to verify the alleged burn, but no interview took place. Liability was therefore disputed, as no similar case had been experienced before. His Honour Judge Hyslop Maxwell held that the plaintiff's head had been burned, but there was no permanent incapacity. Judgment was given for the plaintiff for £24 10s. and costs.

THE DUTIES OF HOTEL RECEPTIONISTS.

In the recent case of *Colley* v. *Callow*, at Bournemouth County Court, the claim was for £27 as damages for wrongful dismissal. The plaintiff had been engaged as assistant housekeeper and receptionist, at a wage of £1 a week and board and lodging. Her duties included singing to the guests at

dances, between 8 p.m. and 11 p.m., and she understood the engagement was from Easter until the middle of October. In July, however, she received a week's notice, although the only complaint had been in May, when a reference had been made to her unpunctuality in returning at night. This was given as the reason for her dismissal, as her work in other respects was satisfactory, and she was given a good reference. The defendant denied any agreement to employ the plaintiff for the whole season, as she had previously been a drapery assistant. The engagement was therefore conditional upon her suitability for hotel life, but the plaintiff was unpunctual, and made no effort to enter into the social side of the business, e.g., instead of talking to the guests with a smile, she went about looking morose. She also did not carry out her duty of dusting her own and the public rooms satisfactorily, nor did she organise entertainments. His Honour Judge Hyslop Maxwell held that the engagement was for the whole season, and judgment was given for the plaintiff for £27 and costs, subject to the repayment to the Ministry of Labour of 15s. a week unemployment benefit.

Reviews.

Compensation for Public Acquisition of Land. By Wm. Marshall Freeman, of the Middle Temple, Barrister-at-Law, Recorder of Stamford. Second Edition. 1935. Demy 8vo. pp. xxi and (with Index) 232. London, Liverpool, Birmingham and Glasgow: The Solicitors' Law Stationery Society, Ltd. 12s. 6d. net.

The need for a practical reference work such as this is proved by the fact that it has become necessary to print a second edition after a short interval of two years. Its clarity and comprehensiveness warrants its popularity, and the incorporation in the text of the changes effected by the Local Government Act, 1933, the Housing Act, 1935, and the Ribbon Development Act, 1935, has been achieved with all the skill which the author showed in the first edition. It is not a mere compilation of portions of Statutes. It is, of course, vital to quote the relevant Statutes, but, in addition, there is a full explanatory introduction to each of the thirteen sections into which the work is divided. The scope of the latter part of the first edition has been expanded by revising the section on electricity supply and by adding sections on gas and water supply and a number of other Statutes in their relation to acquisition and compensation. Additional annotation to the already full notes of the first edition has been included. A continued career of usefulness both for local authorities and private owners can be predicted for this work.

Golf from A to Z. By James Currie Macbeth. 1935. Crown 8vo. pp. xv and (with Index) 150. London: Putnam and Co. Limited. 5s. net.

Our golfing readers will find much of interest and profit in this book by a member of their own profession. The writer addresses himself primarily to the handicap player, but the expert is also catered for, while the number of excellent illustrations is a feature that will appeal to both. He takes an original line on certain fundamentals of the game. "Keep your eye on the ball" is, for example, exhibited as a fallacy; while the besetting sin of all golfers—"head up"—is traced to a cause other than that commonly assigned, the desire to see the fate of the ball after impact. Many golfing manuals have the opposite from the desired effect on the reader's game. This, if studied with care, should give real assistance and quickly enable the reader to recoup the cost in the shape of half-crowns wrested from defeated adversaries.

Books Received.

Share Records and their Audit. By W. J. Back, Incorporated Accountant. 1935. Demy 8vo. pp. viii and (with Index) 165. London: Gee & Co. (Publishers) Limited. 6s. net.

Professional Businesses' Accounts. By A. N. W. Thompson, Attorney of the Supreme Court of South Africa. 1935. Demy 8vo. pp. 58. London: Gee & Co. (Publishers) Limited. 5s. net.

Research in the Office. By P. T. Lloyd. 1935. Royal 8vo. pp. (with Index) 132. London: Gee & Co. (Publishers) Limited. 7s. 6d. net.

The Juridical Review. Vol. XLVII. No. 4. December, 1935. Edinburgh: W. Green & Son, Limited. 5s. net.

Trial of Alma Victoria Rattenbury and George Percy Stoner. Edited by F. Tennyson Jesse. 1935. Demy 8vo. pp. 298. London and Edinburgh: William Hodge & Co., Ltd. 10s. 6d. net.

The Business and I. By W. J. B. Odhams. 1935. Demy 8vo. pp. xii and 194. London: Martin Secker. 8s. 6d. net.

Lectures and Transactions of the Incorporated Accountants' Students' Society of London and District, 1934–35. Demy 8vo. pp. xiii and 233. London: Incorporated Accountants' Students' Society. 3s. 6d. net.

Local Government Law and Administration in England and Wales. Vol. VI. By The Rt. Hon. The Lord Macmillan, a Lord of Appeal in Ordinary, and other Lawyers. 1936. Royal 8vo. pp. xlvii and (with Index) 465. London: Butterworth & Co. (Publishers), Ltd. 45s. net. Thin edition, 47s. 6d. net.

[All books acknowledged or reviewed can be obtained through The Solicitors' Law Stationery Society, Limited, London, Liverpool and Birmingham.]

Obituary.

Mr. F. R. SANDERSON, K.C.

Mr. Francis Robert Sanderson, K.C., O.B.E., formerly Judge of the Egyptian Court of Appeal, died at Strobl, near Salzburg, on Thursday, 12th December, in his sixty-first year. Mr. Sanderson, who was educated at Fettes and Queen's College, Oxford, was called to the English Bar by the Inner Temple in 1900, and to the Scots Bar in 1901. In 1904 he was appointed to the Chair of Commercial and International Law in the Khedivial School of Law, Cairo. Later he became a Judge of the Native Tribunal of First Instance in Cairo, and in 1917 he was promoted to the Egyptian Court of Appeal.

Mr. R. D. BAXTER.

Mr. Robert Dudley Baxter, retired solicitor, formerly senior partner in the firm of Messrs. Baxter & Co., Parliamentary Agents, of Westminster, died at Kensington on Saturday, 14th December, at the age of seventy-seven. Mr. Baxter was admitted a solicitor in 1880. He was an alderman and had been three times Mayor of the Royal Borough of Kensington. He retired about two years ago.

Mr. F. H. BRETHERTON.

Mr. Francis Hawkins Bretherton, LL.B., solicitor, a partner in the firm of Messrs. Bretherton & Sons, of Gloucester, died on Sunday, 15th December. Mr. Bretherton was admitted a solicitor in 1902.

Mr. J. W. TYACKE.

Mr. Joseph Walker Tyacke, solicitor, head of the firm of Messrs. J. Walker Tyacke & Son, of Helston, died on Wednesday, 11th December, in his ninetieth year. Mr. Tyacke was educated at Marlborough and was admitted a solicitor in 1870. He became a member of Helston Borough Council in 1877, and in 1892 he became Town Clerk. He was Registrar of Helston County Court and for many years was clerk of West Kerrier Magisterial Bench, Helston.

To-day and Yesterday.

LEGAL CALENDAR.

16 DECEMBER.—Nathaniel Fiennes, who had been Commissioner of the Great Seal under Cromwell, died on the 16th December, 1669.

17 DECEMBER.—On the 17th December, 1863, Sergeant Joseph Mahaig, of the Buffs, was tried at the Kingston Assizes for the murder of Elizabeth Waterer. In a fit of despairing infatuation, they had stayed together at an inn in Guildford and then taken poison. The girl had died, but the man had lived. Afterwards, he had inflicted a dreadful wound on himself, stabbing himself in the neck. When the police broke in the door of the room, he was found almost dead from loss of blood. The jury brought in a verdict of "Guilty," adding a recommendation to mercy on the ground of his good character, and Mr. Baron Pigott passed sentence of death. He was afterwards reprieved.

18 DECEMBER.—Robert Monsey Rolfe, son of The Rev. Edmund Rolfe, was born at Cranworth on the 18th December, 1790. He went to the Bar and entered politics as a Liberal, becoming Solicitor-General in 1834. In 1839 he was raised to the bench of the Court of Exchequer, although his practice had been mainly in Chancery. In 1850, however, he returned to equity, being appointed Vice-Chancellor, and shortly afterwards he received a peerage as Lord Cranworth, the only Vice-Chancellor to sit in the House of Lords. He finished up as Chancellor.

19 DECEMBER.—In *Badcock* v. *Great Western Railway Co.*, heard in the Court of Exchequer on the 19th December, 1849, a firm of bankers sought to recover from the railway company the value of a box of gold and silver lost on the way from London to Taunton. The case turned on whether or not the guard was the thief, and in order to prove that a stranger was guilty the company brought into court a model of the carriage in which the gold travelled. A witness got into the model, placed himself where the robber must have been, and, in the presence of the jury, performed the feat of forcing open the strongly clamped and nailed box in a minute and a half. But the jury could not make up their minds and were discharged without giving a verdict.

20 DECEMBER.—On the 20th December, 1779, several members of the Council of Madras were tried in the King's Bench for deposing and imprisoning the Governor, Lord Pigot. The trial started very early and lasted till two the following morning. After the Attorney-General had put his case "in a most pathetic and eloquent speech," Mr. Dunning, "in the most masterly pleading that was ever exhibited in a weak cause," put forward the arbitrary acts of the Governor, urging that his arrest had become a civil necessity equivalent to self-defence. "Lord Mansfield about half after one in the morning summed up the matter very concisely," and a weary jury took a quarter of an hour to find a verdict of "Guilty."

21 DECEMBER.—Mr. Baron Trevor was one of the judges who got into trouble over the question of ship money. Having united with the rest of the judges to give a joint opinion in favour of its legality, he afterwards supported his view in a most foolish inconclusive speech in *Hampden's Case*. For this he was duly impeached when the Long Parliament met, being fined £6,000 and sentenced to imprisonment at the pleasure of the House of Lords. The fine being immediately paid, he was released and allowed to resume his place in the Court of Exchequer. Having learned his lesson, he adhered to the Parliament in the Civil War, but refused to act after the King's execution. He died on the 21st December, 1656.

22 DECEMBER.—On the 22nd December, 1558, Nicholas Bacon received the post of Lord Keeper at Somerset House. Till his time, doubts had existed as to the precise difference between the offices of Lord Keeper and Lord Chancellor, but shortly after his appointment an Act was passed declaring that the Keeper had the same rights and powers as if he were Chancellor.

THE WEEK'S PERSONALITY.

The law fell into extraordinary hands during Cromwell's time. No choice of the Lord Protector's was stranger than that of Nathaniel Fiennes to be Lord Keeper. He was the son of Lord Say, and had passed a short time in the Inns of Court, but merely to finish his general education. His previous record consisted mainly of an extraordinary military career, for having been appointed a colonel in the Parliamentary forces, he first failed to surprise the Royalists in Worcester and then failed to hold Bristol against Prince Rupert, surrendering as soon as the city was invested. On his return to London he was court-martialled, and, after a nine days' trial, condemned to death. His family connections saved him, and being pardoned he went abroad to cover his disgrace. However, a few years later, he was back again, taking an active part in politics. Then when Whitelocke and Widdrington, as trained lawyers, would have nothing to do with Cromwell's sweeping projects for altering the Court of Chancery, the Great Seal was taken from them and entrusted to Fiennes, together with L'Isle. In their keeping it remained until the Protector's death, after which the complaints of their incompetency availed to secure the re-appointment of Whitelocke. On the Restoration, Fiennes retired to his seat in Wiltshire, where he died.

SHAMPOO AND SHAVE.

At a recent trial in Dublin, some difficulty arose as to the identification of two of the accused, and as it was suggested that since the identity parade at which they had been picked out the colour of their hair had changed, they were sent out of court to have it washed. Judge and jury, however, after a careful scrutiny, could discover no material change, and, later, the men were acquitted. Such experiments, however, do sometimes bear fruit. Not long ago, a confidence trickster who had posed as an English knight appeared in a French court, but was found to be unidentifiable by the witnesses for the prosecution, because he had lately grown a beard. The judge ordered its immediate removal, and, on its being objected that this was impossible, replied decisively that he had a shaving outfit in his private room. Most conveniently, the usher proved to be an expert barber, so the operation was performed in an ante-room without delay. The barefaced prisoner returned to court to be convicted and sentenced to eight years. The whole thing sounds as if it had come out of a René Clair film, but it didn't.

SOUVENIRS FOR THE CHANCELLORS.

Considering the rarity of such pageants, the smoothness of the ceremonial at the recent trial in the House of Lords was very remarkable. Part of it, at any rate, was, I believe, rehearsed beforehand, a wise precaution, not without precedent, for Lord Russell of Killowen certainly held a private dress rehearsal in court the day before he was sworn in as Lord Chief Justice. In the pieces of the white staff, the symbol of the Lord High Steward's office, broken by him at the end of the trial, Lord Hailsham will have a memorable and unusual memento of his Chancellorship, in some ways more memorable than the Great Seal, which becomes the property of any Chancellor in whose time a new one is made. One recalls the curious contest between Lord Lyndhurst, who ceased to be Chancellor after William IV's new Seal was ordered, and Lord Brougham, who succeeded him before it was finished. The King, appealed to on the question of possession, said: "Well, I will judge between you like Solomon. Here, now, do you cry heads or tails?" Brougham chose the bottom part and Lyndhurst got the other, the King ordering each half to be converted into a splendid silver salver.

THE LAW OF PROPERTY ACTS, 1925.

By A. F. TOPHAM, Esq., K.C.

A Verbatim Report of the Ninth of a Series of Lectures Delivered to The Solicitors' Managing Clerks' Association.

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The President (Mr. S. H. Vere): Gentlemen, I should like to make an announcement this evening with regard to a lecture which is being given through this Association on Friday next, the 13th, in the Old Hall, Lincoln's Inn. The lecturer is Mr. Raymond Evershed, K.C., the subject being: "Duties and Liabilities of Directors," the chair being taken at 7 o'clock by The Hon. Mr. Justice Farwell. I am sure you will hear something useful and interesting on this subject by this eminent barrister. Tickets, as you know, are quite free, and they will be available for any who would like to attend the lecture from the stewards who are attending at this hall this evening.

I now have pleasure in asking Mr. Topham to give his ninth lecture.

Mr. Topham: Mr. President and Gentlemen: This course of lectures is drawing to its close, but the number of questions or conundrums that are being put to me does not seem to be drying up. I shall not be able to deal with nearly all of them, but there are one or two which have a very important bearing on what I have already said, and on what I shall be dealing with to-night, and I propose to deal with one or two of them in the course of this lecture.

One question has been put to me—in fact more than one—dealing with that troublesome state of affairs which arose when the Act was passed, where some person had become a tenant in fee simple subject to a jointure rentcharge, or some similar charge, under an old outstanding settlement. There, you will remember, it has been held that the land was not settled land before the Act, but became settled land under the Act, and therefore, it could not, before the amending Act was passed, be dealt with except under the Settled Land Act.

One difficulty which has been put to me is this, that the amending Act of 1926 gives "the estate owner" the power to sell and convey a legal estate in the land as if it were not settled land, and I have been asked how you can fit in the two decisions of *Re Lord Carnarvon's Highclere Estates* [1927] 1 Ch. 138; 70 Sol. J. 977, and *Re Ogle's Settled Estates* [1927] 1 Ch. 229; 70 Sol. J. 953. It seems to me that they fit in rather well. *Re Lord Carnarvon's Highclere Estates* has made it quite plain that each purchaser who bought the fee simple before the Act was passed obtained the powers of a tenant for life; they are in the same position as the company to whom Lord Carnarvon sold his Highclere Estates; and therefore, each such purchaser was entitled, on the passing of the Act, to have the legal estate vested by a vesting deed, if he wanted to. In any case it automatically vested in him. So that the purchaser of each separate piece of land became the estate owner. Then *Re Ogle's Settlement* showed that if the person entitled under the original settlement wanted to get new trustees, he could get new trustees appointed in respect of that settlement as concerned only the land still retained under the settlement. Then I was asked: "Who in those circumstances are the trustees of the settlement still existing as regards the pieces of land which have been sold?" I think the answer must be this: that to the extent that you treat it as being settled land, the trustees must be the trustees of the original instrument under which the rentcharge exists; and accordingly, if any purchaser of a separate fee simple wanted to deal with the land under the Settled Land Act, the money would have to be paid to the trustees of that original settlement. Of course, since he has power under the amending Act to sell as if the land was not settled land, he will nearly always sell in that way, and not, as he can if he wishes to do, as having the powers of a tenant for life under the Settled Land Act.

Another interesting problem which has been put to me is with regard to the case of *Howe* v. *Lord Dartmouth* (1802), 7 Ves. 137, which, as I was explaining on the last occasion, still applies, perhaps rather unfortunately, to unauthorised or wasting investments where there is a residuary gift of personalty. I have been asked whether the case of *Howe* v. *Lord Dartmouth* applies in the case of an intestacy where life interests, of course, may arise. That is a point I have not heard discussed, and I know of no authority upon it. It is not altogether clear, but I think if you read s. 33 of the Administration of Estates Act, you will come to the conclusion that the rule in *Howe* v. *Lord Dartmouth* is excluded. One reason is this, that the property is to vest in the administrators on trust for sale with an express power to postpone. That is not enough in itself to exclude the rule in *Howe* v. *Lord Dartmouth*, but then sub-s. (5) says this, that the income, however such estate is invested, may be treated and applied as income. That at first sight seems to make it quite clear, except that the word "may" is used: "*may* be treated and applied as income." If it had been "*shall* be treated and applied as income" it would have been quite clear that the rule was excluded; and it is curious to note that in s. 28 of the Law of Property Act, the word "shall" is used. So it does leave room for some doubt, but I think if you were to apply the cases which were decided before the Act to s. 33 as if it were the contents of a will, the courts would hold that the rule in *Howe* v. *Lord Dartmouth* has been excluded. That, like many of the questions which have been put to me, I cannot give a very definite answer to until the point has actually come up for decision.

I now come to the place I had reached in my last lecture, and as that was a fortnight ago perhaps I had better remind you what it was we had been discussing. I was dealing with the power of maintenance—the power to maintain persons who were contingently entitled to property. There the old rule was laid down by s. 43 of the Conveyancing Act, 1881, and power was given to trustees to maintain where an infant was entitled contingently on attaining twenty-one or the occurrence of some event before that time. Then the Trustee Act of 1925 repealed that section as to the future, and by s. 31 it extended the power of maintenance, you may remember, to cover cases where the interest was contingent not necessarily on reaching twenty-one, but possibly on reaching some further age than twenty-one, say twenty-five. But the application of the section was cut down, as I pointed out to you, by the proviso in sub-s. (3), which says that the section is to apply in the case of a contingent interest only if the trust carries the intermediate income. So we get back to all those troublesome cases as to whether the intermediate income is carried or not. You will remember also that in regard to specific devises or bequests or residuary gifts of freehold, it is provided by s. 175 of the Law of Property Act, that such a gift is to carry the intermediate income. So you get the unfortunate survival of the difference between the residuary gift of personalty and the residuary gift of realty.

On that question I have been asked this: in the case of an infant who becomes entitled under the new Acts, is the power to maintain an infant who is entitled contingently on attaining twenty-one taken away? At first sight it rather looks as if

it was, at any rate, cut down, but that depends really on whether or not s. 43 of the Act of 1881 applied in cases where the intermediate income did not pass with the gift. There were several cases on that section; I will not trouble you with them now, but there were several which contained certain dicta in the Court of Appeal to the effect that that section did not apply where the gift did not carry the intermediate income. There was one case in which Mr. Justice Younger, as he then was, decided that he would not follow those dicta, and he held that there was a power of maintenance even in the case where the intermediate income was not carried; and it now follows, I think, that the new section, s. 31, has decided the point which was then a point of doubt in favour of the view taken by the Court of Appeal, and it is made quite clear now that in the case of a person who becomes entitled after the Act, although contingently on reaching twenty-one, maintenance is not provided for unless the trust carries the intermediate income. That, perhaps, is a little unfortunate, because it still keeps that old distinction going. However, the courts, I think, are inclined to construe wills, if possible, as giving a right to the intermediate income, and giving a power to maintain, if there is any kind of indication to assist. The old-established rule, I think I pointed out last time, was this, that where there is a gift to a child, or a person to whom the donor is in *loco parentis*, then a contingent gift does carry the intermediate income, and in the case of any person, if there is an intention shown to provide for the maintenance of that person, again the contingent gift will carry the intermediate income.

Before the Act it was doubtful whether the court could hold that a contingent interest carried the intermediate income where the contingency was some event after attaining the age of twenty-one, but Mr. Justice Farwell has cleared up that doubt, at any rate, as regards cases after the Act, in the case of *Re Jones* [1932] 1 Ch. 642. That is a case which is a little misleading when you begin to read it, because the headnote, at any rate as I read it, does not correctly describe the decision of the court. The headnote says it is within the discretion of the court to allow maintenance, but when you look at the case I think you will find it is not a question of the discretion of the court, and the headnote should say this: The court may on the construction of the will infer an intention that the child shall be maintained. It is a question really of construction and not of discretion. The facts of the case were these: Among other things, the testator bequeathed the sum of £2,500 to each of his four children if and when each of them attained twenty-five. There you see the contingency was on attaining an age after twenty-one. There were separate provisions made for the maintenance of the sons, but no express provisions for the maintenance of the daughters. There were, however, certain slight indications that the testator intended his daughters to be maintained somehow, and Mr. Justice Farwell held that these very slight indications were quite enough, even though the contingency was attaining an age after twenty-one, for him to construe the will as showing that there was an indication that the daughters should be maintained, and the result of that was that the legacies did carry the intermediate income. I think you can take it from that case that in the case certainly of a child of the settlor or testator an intention will be very readily discovered to show that the gift carries the intermediate income.

A somewhat similar subject, namely, advancement, is also dealt with by the new Act, and is put on a very much wider footing than maintenance. That is covered by s. 32 of the Trustee Act, and that says that the trustees may pay or apply capital money subject to a trust for the advancement or benefit—notice those very wide words—of any person entitled to the capital of the trust or any share thereof whether absolutely or contingently on his attaining any specified age, or on the occurrence of any other event, even though it is subject to a gift over, or liable to be defeated by a power of appointment. So that, you see, gives the very widest powers of advancement even in the case of purely contingent gifts, but subject to this limitation, that not more than one-half of the share or interest may be applied, and any money so used must be brought into hotchpot, and thirdly, the advancement must not be used so as to prejudice any prior life interest or other interest without the consent of the person so entitled. This has been held to apply to every kind of contingency, and in one case there was what you might call a double contingency, and still Mr. Justice Clauson held that the section applied. It also shows a wide meaning given to the word "benefit." That case was the case of *Re Garrett* [1934] Ch. 477. The residue there was given to the testator's daughter and son for their lives; the daughter's share after her death was given to such of her children living at her death as should attain twenty-one, or marry. The daughter had only one infant child, and she as tenant for life wished that child to be assisted out of the capital of the fund, and she wanted an advance made by the trustees for the school fees of the child. You might have thought that that looks more like maintenance than advancement, but the court held it was sufficiently covered by the words "advancement or benefit of any person." Another difficulty that arose was that the daughter, the life tenant, held the property subject to a restraint on anticipation. So the question was, could she consent to the advancement being made? Mr. Justice Clauson got over the difficulty and held that this was a case covered by the section, and that the daughter could consent. He particularly guarded himself, however, against suggesting that if there was a proviso for forfeiture of the daughter's interest, as under protective trusts, she could necessarily consent. He left that undecided. So you had better be rather careful how you get a person who has a protected life interest, or is holding under a protective trust, to consent to advancement, because it might possibly be used as having created a forfeiture of the interest. That question is left undecided.

Now I come to the position of infants generally under the Acts. First, as regards intestate succession. Of course, you know very great changes were made, particularly in the law of intestate succession to land. It was not intended by doing that in any way to interfere with the custom of settling land given to the eldest son where anybody desired to do that. Also it was thought that although very big changes were made in the law of intestate succession, there was no hardship involved, because if a person did not like the new law of intestate succession he only had to make a will and he could do what he liked. But in a case where a person entitled to property was under a disability such as infancy or lunacy, if such a person died while still under the disability there was no opportunity for such a person to have executed a new will. Accordingly you will find the Act deals particularly with cases of infants dying entitled to real estate, and lunatics also. The first is provided for by s. 51 (3) of the Administration of Estates Act, which provides that where an infant dies after the passing of the Act without having been married, and is entitled under a settlement and the settlement includes a sale of a fee simple interest in land or property settled to go with the land, such infant shall be deemed to have an entailed interest. Now you can see what was behind the mind of the draughtsman there. Of course, where you get an entailed interest, that descends under the old law to the eldest son, and so on, and will do so until the entail is barred. But there was some confusion of thought there, because if the infant was deemed to have an entailed interest, then it would descend to the children of that infant quite clearly; but the section only applies to an infant who has not been married, and so, as I say, there is rather a confusion of thought. But when a case of that kind occurred the court placed what I may call a benevolent construction on the section, and gave effect to what I think was clearly the intention of the draughtsman by construing it in this way: that it was to be deemed to have been entailed land which the infant had inherited as an estate tail or entailed

interest. It arose in the case of *Re Taylor* [1931] 2 Ch. 242. There a man named Taylor, who was possessed of freehold land, died intestate shortly before the passing of the Act, namely, in September, 1925. Taylor had three children, Sydney, Doris and Harry, and as he died intestate before the Act possessed of freehold land, the freehold passed to Sydney, his eldest son. Then Sydney died whilst still an infant and unmarried in the year 1930, and the question was, who became entitled to the property ? Now, you see, there is a case of an infant who was entitled to fee simple land under what was deemed to be a settlement, and therefore he was deemed to have an entailed interest, but as he died without issue there was nobody to take under that entail. It was then argued that that being so, the section had ceased to operate, and the mother was entitled under the new law to succeed to this property as having vested absolutely in Sydney ; but it was held that the land descended to the next person who would have been entitled under the entail. If the provisions of the section had been strictly applied, it would have made nonsense of the section, because if Sydney had an entailed interest, strictly speaking the fee simple reversion to that entailed interest would have remained vested in the father, and the father having died intestate, the fee simple interest would come back to Sydney, and when it got back to Sydney it would be turned into an entailed interest again ; and so it would have gone on for ever and ever apparently. But the court had no difficulty in saying that that construction must be absurd, and accordingly it was held that Sydney's first succession had exhausted all his rights, and as he had an entailed interest and no issue, then the property went next to the brother Harry as the next heir under the entail, or heir at law of the father. I think that decision, although perhaps it was difficult to arrive at, has really given the effect to the section that was intended.

Another point about infants is this : under the Administration of Estates Act, s. 42, when there is a legacy held by personal representatives in favour of an infant, of course there is always a difficulty in getting a discharge for that legacy ; but s. 42 enables the personal representatives to appoint two or more trustees or a trust corporation, and transfer the legacy to trustees for the infant. I was asked whether that was permissive in this sense : Have the administrators a discretion either to continue to act as administrators and hold the legacy for the infant until he reaches twenty-one, or are they more or less bound to hand it over to trustees ? I think the answer is shown quite clearly by the case of *Re Wilks* [1935] Ch. 645. If the personal representatives choose to continue to act as such, they may do so, and may keep the property and hold it until they can hand it over to a beneficiary who has reached twenty-one. On the other hand, the case of *Re Yerburgh* [1928] W.N. 208, which I have already mentioned to you, shows that if they want to get rid of their liability as personal representatives, or get the administration bond discharged, they can, if they like, appoint trustees and hand the legacy over, and they can even appoint themselves to be trustees and vest the property in themselves.

Then we come to similar provisions as to intestate succession in the case of lunatics. There, as regards real estate, a somewhat similar provision is made, though I think it is rather clearer in its terms. Section 51, sub-s. (2), of the Administration of Estates Act says this : " The foregoing provisions of this Part of this Act "—that is to say, intestate succession—" do not apply to any beneficial interest in real estate to which a lunatic " (I am leaving out some words) " living and of full age at the commencement of this Act and unable by reason of his incapacity to make a will who thereafter dies intestate in respect of such interest without having recovered his testamentary capacity was entitled at his death "—it is rather like a German sentence ; you have to read about half a page before you come to the verb ; but it is all right, if you read it through ; it all boils down to " was entitled at his death . . . any such beneficial interest shall without prejudice to any will of the deceased devolve in accordance with the general law in force before the commencement of this Act applicable to freehold land and that law shall notwithstanding any repeal apply to the case." Accordingly, if a lunatic dies, who was a lunatic before the Act and dies still a lunatic intestate, the property goes according to the old law. A case in which that was discussed and decided arose in *Re Harding* [1934] Ch. 271 ; 77 Sol. J. 853. This is the sort of case which often occurred with regard to lunatics. The testatrix there had made her will as far back as 1877, and soon after that she became a lunatic, and all the legatees and devisees under the will died before the testatrix. She remained a lunatic and died in the year 1932 intestate, because all the provisions of her will had failed. She owned a three-quarter share of freehold land. In 1923 the Master in Lunacy approved a sale of this three-quarter share, and the proceeds were invested in Conversion Stock. So that you see it was an undivided share in land, but before the Law of Property Act had turned it into personalty it was sold and invested in stock. But by s. 123 of the Lunacy Act, 1890, a sale of property does not alter the nature of the property sold. Accordingly, as that was freehold land at the time it was sold, it remained freehold land. It was argued that as the stock represented undivided shares in land, the stock had been converted into personalty by the Law of Property Act, which imposes a trust for sale on undivided shares ; but the court held : No, it still remained legal estate, and the stock passed to the person who would be entitled to the real estate under the old law, that is to say, the heir-at-law. I want you to notice the phrase there : " The property shall . . . devolve in accordance with the general law in force before the commencement of this Act."

A curious case occurred about a fortnight ago, which has not been reported yet, and I cannot give you the name of it, but it was decided by Mr. Justice Farwell. This is what happened. The lunatic in that case had had an illegitimate child and afterwards married, so that under the Legitimacy Act of 1926 the child became legitimated by the marriage of its parents. Section 32 of the Act says : " A legitimated person shall be entitled to take any interest in the estate of an intestate dying after the date of legitimation in like manner as if the legitimated person had been born legitimate." The problem arose, What was the law which had to be applied ? If you go back to s. 51 of the Administration of Estates Act, you will see that, where a lunatic dies, the law which is to be applied is the general law in force before the commencement of this Act, and Mr. Justice Farwell held that the law in force before the commencement of the 1925 Act was the law before it had been changed by the Legitimacy Act, and therefore the legitimated child could not take the property. It is a difficult point, and a rather interesting one, but perhaps one not likely to occur very often.

The change in the law as regards personal property, of course, was not so drastic, and so there was no necessity to make a general rule that the old law should apply, and the way that any difficulty might be got over was this : In s. 171 of the Law of Property Act the court is given a discretion to direct a settlement to be made in certain cases. It says : " The court may direct a settlement to be made of the property of a lunatic or defective "—that is a person not so found—" on such trusts, etc., as the court may deem expedient." The court may do it in certain cases, " and in particular where by reason of any change in the law of intestacy . . . the court is satisfied that any person might suffer an injustice if the property were allowed to devolve as undisposed of." The first case which came before the court under that section was the case of *Re Freeman* [1927] 1 Ch. 479 ; 71 Sol. J. 272, and it is a good illustration of the sort of way in which the court may act under the section. Alice Freeman was a spinster who lived to the age of eighty-one, and she was a

lunatic not so found. She had about £2,000. She had been a lunatic for a very long time. She had made a will in 1880—it is very like the other case—and she became a lunatic in 1882. By her will she gave her property to her sisters, and they all died before her. She had no near relations, but there were certain second cousins, descendants of the same great grand-parents. The result was that, before the passing of the Act, those second cousins would have been next-of-kin and entitled to the property, and whether or not they were influenced by that circumstance, they had taken a considerable interest in the lunatic aunt and helped to look after her, and in fact the persons to whom they succeeded as residuary legatees had spent a considerable sum, over £2,000, on the lunatic in looking after her. Of course, before the Act was passed, they had expected to take on intestacy, as the lunatic's will had failed, and she could not make another one. It was held there that in those circumstances there would be an injustice operated by the new law of intestacy if those people were not entitled to take something. What would have happened under the new law was that, being second cousins and the descendants of great grand-parents, the Crown would have taken the property as *bona vacantia*, and the question was whether the court could make a settlement in favour of those persons, or let it go to the Crown. The court said that what they thought was meant by the word "injustice" was that in the ordinary way it would be said to be unfair or hard luck on those people if they did not get what they expected to get. But it by no means follows that in every case the court will make a settlement. There was a group of other cases reported under the heading of *Re Greene* [1928] Ch. 528. There the court was acting on the principle that it would not assist distant relatives who were coming in more or less for a windfall and who took no notice of the lunatic during his or her life. But the power of the court is very wide.

One rather interesting case was *Re Fraser*, which is among that group at p. 540, where a mother who had a certain power of appointment of her own property appointed it to her son, who was a lunatic, or became a lunatic, and it was quite clear that this son was going to die intestate, and in fact was not likely to live very long. If he died intestate, all the property would or might go to his father, or, at any rate, the father would come in for a share. The father was a person who had not proved satisfactory as a father, and the mother particularly wanted the settlement made of this property which she had appointed to her lunatic son in such a way that the paternal relations could not come in and share in it; and the court thought that that was the right thing to do, and made a settlement excluding the father and his relations.

Another matter that is dealt with in the Administration of Estates Act is the executors' right of retainer. The old law was this—it is a rather curious law, perhaps—that the executor in paying the debts of the deceased, when there is no administration by the court, can pay the debts in any order that he thinks fit. He can prefer one creditor to another provided they are creditors in what is called the same degree, and, as he can prefer one creditor to another, he not unnaturally frequently preferred himself. That was called his right of retainer, and was recognised as something that he could do. But s. 34 of the Administration of Estates Act makes a very considerable change in the method of administration out of court of insolvent estates, because sub-s. (1) provides that when the estate is insolvent it shall be administered in the way set out in Sched. I, Pt. I, which I have already mentioned to you; that is, according to the rules in bankruptcy as regards the priority of debts and liabilities, and other things I have already mentioned. Then it says, in sub-s. (2): "The right of retainer of a personal representative and his right to prefer creditors may be exercised in respect of all the assets of the deceased, but shall only apply to debts owing to the personal representative in his own right." That has been held to mean this, that under the old law he could only retain in respect of what were called legal assets, that is to say, assets which he had actually got in; and that now extends not only to the legal assets but to assets which he has not actually got into his possession. It says "but shall only apply to debts owing to the personal representative in his own right." That is to say, he cannot retain something which is due to him as trustee for somebody else, thus altering the law. Then it goes on: "Subject as aforesaid nothing in this Act affects the right of retainer of a personal representative or his right to prefer creditors." A question arose as between those two sub-sections, one which says that in the case of an insolvent estate the rules in bankruptcy shall be applied, and the other which says that the right of retainer or preference is not affected, and in *Re Williams* [1930] 2 Ch. 378, Mr. Justice Farwell held that the section preserving the right of preference prevailed over the other. Williams died intestate in December, 1926, that is to say, under the new law. His estate consisted mostly of farm stock and implements, and the administratrix handed this over to an auctioneer to sell in September, 1927. Then two creditors issued writs claiming payment, and the administratrix sent directions to the auctioneer to pay those two creditors out of the proceeds. The estate turned out to be insolvent, and the question was whether that was a valid preference of those two creditors. Mr. Justice Farwell held that it was a valid preference of those two creditors, and that the right of preference or retainer is not altered even though the estate is insolvent and being administered in accordance with the rules of insolvency. But there is one way in which the right of retainer has in fact been affected, because by applying the rules in bankruptcy to an insolvent estate, the Crown has obtained priority in respect of certain rates and taxes—one year's assessed taxes—and the question then arose as to whether the executor's right of retainer in an insolvent estate prevailed against the Crown's right to the taxes. The case was *Attorney-General* v. *Jackson* [1932] A.C. 365. Under the old law it had been held that the Crown had no priority, and the executor could retain against the Crown. There was a good deal of judicial difference of opinion on this case, because Mr. Justice Clauson and two of the Court of Appeal held that the executor's right of retainer was not affected, but Lord Justice Romer, in the Court of Appeal, dissented, and his judgment was upheld in the House of Lords, who held that sub-s. (1) by introducing the bankruptcy rules made the Crown's claim a prior claim, and as the rule of retainer only applied, and has always applied, only to debts in the same degree, when the Crown's claim was put into a higher degree, then automatically the right of retainer ceased as against the Crown, and therefore the Crown had the prior claim.

Another important section of the Administration of Estates Act has been very much changed by recent legislation. That is s. 26 which dealt with actions by and against personal representatives. You will remember that the old common law rule was *actio personalis moritur cum persona*—a personal action ceases on death—which has been interpreted to mean on the death of either the plaintiff or defendant; and accordingly, no action would lie in either case. But the Administration of Estates Act, s. 26, which re-enacted certain other Statutes, gave a right of action in certain cases. First of all, under sub-s. (1) where there was an injury to the personal estate of a deceased person, the personal representatives were given the same right of action as the deceased had; and by sub-s. (2) where there was an injury to the real estate, again there was the same right of action to the personal representative, but the injury must be one which was done within six months before the death, and the action must be commenced within one year after the death. Now that left no remedy at all to the person who had died, or his personal representatives, in respect of any pain or suffering caused to such person, or for doctor's expenses or loss of business, and so on. Again, by s. 26, sub-s. (2), an action will lie against the personal representative of a deceased person—that is, against the estate of the wrongdoer—in the case of wrongs to real or personal

property. However, the period was slightly different; the wrong must have been committed within six months before the death, and the action commenced within six months after representation had been taken out. The result of the law as summarised in that section was that when a person is killed—take the case of a person killed in a motor accident—the representatives of the person who is killed have no right of action for personal suffering and so on, and even if the wrongdoer dies, again the action would come to an end. Of course, there was Lord Campbell's Act, which gave certain remedies to the dependents, but that was quite a different scheme of compensation to the damages which would have to be paid to the person who was killed. Hence it was said in the old days it was much cheaper to kill; and they might have added, it is cheapest of all to die, because if you die after doing damage to a person the action would cease altogether, so far as relates to damage to the person. That rule of *actio personalis moritur cum persona* is very greatly modified by the Act with the very long name of the Law Reform (Miscellaneous Provisions) Act, 1934. What that Act provides, roughly speaking, is this, that on the death of either party the wrongdoer, or the person wronged, all causes of action survive with certain exceptions, such as defamation, seduction and enticing away a husband or a wife. Section 2 also puts some limitation in the case of an action by the personal representative of the deceased person, that is the person who has been wronged. No exemplary damages can be given. In case of breach of promise to marry the damages are limited to the damages to the estate, and there is this rather difficult sub-section, that where a wrongful act causes the death, the loss or gain to the estate is not to be counted, but funeral expenses may be claimed. One thing which is meant to be excluded there, I am pretty certain, is this: that, of course, when a person is killed a large sum of money may come in from life insurance, and that is obviously excluded by the section. A gain to the estate by reason of the death is not taken into account. The result of that is, then, that quite apart from Lord Campbell's Act, if a person is killed in an accident, or dies as the result of the accident, after perhaps suffering for some weeks or months, any cause of action which he had survives, and he would have an action for pain and suffering, doctor's expenses, loss of wages, and so on.

Then with regard to actions against the personal representatives of the deceased wrongdoer. All those rights of action survive, but the rules as to limitation of action are rather severe, because the proceedings must have been commenced before the death of the defendant, or the cause of action must have arisen within six months before the death and the action commenced within six months after the representation is taken out. Thus, supposing there is a person who runs down another negligently and becomes liable for heavy damages, and then the person who is accused, the wrongdoer, dies. If he dies more than six months after the accident and an action has not been commenced, the cause of action goes. The practical result seems to be, then, that if you have a cause of action against anybody in tort, for instance, say an accident from a motor car being negligently driven, you should issue your writ very quickly, certainly within six months of the accident, because if the defendant should happen to die, and you do not bring the action within six months, then the action will abate and the cause of action will cease. There is another very good reason for doing that in some cases. You may remember that there is an Act called the Public Authorities' Protection Act under which, if you are bringing an action against a public authority, you have to bring your action within six months. That may be all right when it is a question really of a claim against a public authority in respect of a highway, or something of that kind, but the curious thing is that now that such companies as the London Passenger Transport Board are public authorities, you have to bring your action within six months if you are run over by a bus. Under the old law, if it was the London General Omnibus Company you had six years in which to sue them, but if it is the London Passenger Transport Board you have to bring your action within six months. So if you have a client claiming damages for an accident by bus or car or anything of that kind, be sure and issue your writ before waiting very long, even though you do not pursue it later.

There is one curious point of law on the question of people killed by motor cars, and it is altogether in a very great muddle, and perhaps hardly relevant to the question of property which I am dealing with, but the question which has arisen is this: If a person is injured by a motor car accident, say, and is very badly injured but continues to live, it has been held that that person can, in addition to damages for loss and suffering, claim damages for loss of expectation of life if it can be shown that his expectation of life has been materially shortened. That is the case of *Flint* v. *Lovell* [1935] 1 K.B. 354; 78 Sol. J. 860. The question then arose that, supposing a person who has been very badly damaged lives for five or six days and then dies—his representatives have all the causes of action which he had—can they claim not only for his pain and suffering, medical attendance, and so on, but for the shortening of his expectation of life? His expectation of life has been shortened very considerably if he dies within six days. There is some difference among the judges. In the case of *Rose* v. *Ford* [1935] W.N. 168; 79 Sol. J. 816, the Court of Appeal by two judges to one has decided that that class of damage cannot be recovered. I understand the case is going to the House of Lords, and it is possible that the House of Lords will solve the difficulty by holding that *Flint* v. *Lovell* is wrong, and in no case can you recover damages for the shortening of your expectation of life. However, that question is rather left in the air for the moment.

I will stop there. (Applause.)

Land and Estate Topics.

By J. A. MORAN.

Everything goes well with the market for real estate; a condition of things that is not at all usual in the last few weeks of a year. Even now, as late as it is, the list of auctions fixed for the latter half of December includes some very important properties. Soon, as a matter of course, auctioneers all over the country will be telling us how things have gone with them, and what are the prospects for 1936, and it is more than likely that their reports will strike an optimistic note.

Auctioneers and property owners are dead against the proposal of the London County Council to rate empty property, and they are leaving no stone unturned to protect the interests of many hard-working citizens who are unable to find suitable tenants for their property. Soon after the War there might have been some excuse for the proposal, but the position is very different to-day when there are many houses to be let all over the country.

The presidential address at the Chartered Surveyors' Institution meeting was an interesting and very painstaking review of the present position so far as it affects the landed interests. Mr. H. M. Stanley's preference, when possible, for the suburban cottage and garden for the working man is entitled to the greatest respect; but as long as the garden is neglected, and only used for the purpose of drying clothes, while the youthful members of the family are allowed to play in the streets, the up-to-date flat and its enclosed playground, come first.

A speculative builder who had made a pot of money out of a model village of houses erected in a hurry, and likely to come down in a hurry, died, and was shown over the next world by an official, "Dear me," exclaimed the builder, "I had no

idea that Heaven was so like the Grabbingall Estate." "This," said the official, "is not Heaven."

It has been proposed to change the name of Lower Grosvenor-place, Westminster, to Arabella-row. And when the Westminster valuer had time to think over the matter, he gave it as his considered opinion that when divorced from Lower Grosvenor-place, a reduction in rental and rateable values was very likely. Probably the introduction of Arabella was a mistake. The name itself is sufficient to create distrust.

The annual dinner of the Auctioneers and Estate Agents' Institute this month attracted a record attendance of members and guests. Proposing the principal toast, that of "The Institute," the Earl of Radnor said that many misguided people thought that, in order to save England for the English, it was necessary to pass Acts of Parliament that tended to control the landowner; and he wondered if that was really the rock-bottom reason for the land legislation of recent years. Taxation had been at such a big rate that landowners had been compelled more often than not to sell their land; and the great landowners who, he believed, were the best planners they ever knew, had disappeared.

At least one individual present at the dinner had what must have been mixed feelings. The Chairman and President, Mr. H. H. Robinson, asked the company to stand up and drink to the health of Mr. F. M. Sydenham, the Assistant Secretary, who was about to retire after forty-one years of loyal service. A gesture that, no doubt, was very much appreciated by Mr. Sydenham; but the close proximity of a break-away from his old friends and associations must have caused many sad reflections.

The Minister of Health, who will act as Chairman, has appointed the Central Housing Advisory Committee under the new Housing Act. Included among the members are Mr. J. A. F. Watson, a Chartered Surveyor, and Mr. O. Ling, Hon. Treasurer of the National Federation of Property Owners and Ratepayers.

In the Finance Act of 1924 provision was made for allowances to owners of farmhouse cottage property on which money is spent in reconditioning. The object was to encourage farmers to improve their farmhouses, outbuildings and cottages. And of late there has been increasing support for the extension of the privileges to industrial cottage property. It is understood that the Chancellor of the Exchequer will discuss the subject in the New Year with a deputation from the National Federation of Property Owners and Ratepayers.

Mr. J. Trevor, who is a leading London auctioneer as well as a Colonel in the 7th City of London Regiment, and anxious to advance the cause of the Territorial Army, writes: "From personal experience I know that if a Principal takes an interest in the Territorial Army, a large number of his staff usually follow suit; and I feel that much valuable work could be done by the different firms in drawing the attention of their staffs to the desirability and advantages of joining one of the Territorial regiments."

Notes of Cases.

Court of Appeal.

Pacheco de Cespedes *v.* McCandlish.

Greer and Scott, L.JJ. 22nd November, 1935.

Practice—Divorce Petition by Wife—Answer Alleging Adultery and Claiming Damages—Enticement Action—Postponement of Hearing till Divorce Proceedings Disposed of.

Interlocutory appeal from a decision of Swift, J.

In March, 1935, the plaintiff's wife filed a divorce petition alleging adultery. The plaintiff filed an answer alleging against her adultery with the defendant, but claimed no relief in those proceedings beyond asking for £5,000 damages against him. Subsequently he issued a writ in the King's Bench Division, claiming £5,000 against the defendant in respect of alleged enticement of his wife. Swift, J., postponed the hearing of that action till after the divorce proceedings had been disposed of. The plaintiff appealed.

Greer, L.J., dismissing the appeal, said that damages in a divorce case rested in substance on loss of the consortium of the wife, evidence being allowed of aggravating circumstances in connection with the adultery. In an enticement action no question of alteration of status occurred, but the damage suffered through the enticement and the loss of consortium could be gone into, aggravating circumstances entitling the plaintiff to vindictive damages. Swift, J., had held that as the divorce proceedings were the more important and the issues, if not identical, were partly the same, the enticement action should be postponed till after the divorce action. For the plaintiff it had been argued that adultery was not of the essence of the claim in the enticement action, but in practice reference could not but be made to the adultery which followed the enticement, and if at the hearing of that action the plaintiff obtained any information, he could amend his pleadings in the divorce case so as to insert such matters. The enticement action should be postponed because of the effect it might have on the divorce proceedings.

Scott, L.J., agreed.

Counsel: *Wallington*, K.C., and *Stenham*; *Sir Patrick Hastings*, K.C., and *H. Simmons*.

Solicitors: *Bowkers*; *Lazarus, Son & L. A. Hart*.

[Reported by Francis H. Cowper, Esq., Barrister-at-Law.]

Appeals from County Courts.

In re Gozzett.

Clauson and Luxmoore, JJ. 18th November, 1935.

Bankruptcy — Nurseryman — Improvements — Loan — Transfer of Charge to Lenders—Cost of Improvements—Not Discharged before Bankruptcy—Improvement of Land Act, 1864 (27 & 28 Vict., c. 114), s 27.

Appeal from Warrington County Court.

G., a nurseryman, wishing to add to the glass houses on his freehold land, approached M. & Co., Ltd., glasshouse builders, who indicated that they could obtain him a loan secured on his land, subject to the approval of the Ministry of Agriculture, and an estimate having been placed before him in April, 1934, G. wrote that he would accept it, subject to his obtaining the loan suggested. M. & Co. took steps to obtain it for him, and on the 27th September, 1934, G. entered into a provisional contract with the Agricultural Mortgage Corporation, Ltd. The deed, after referring to the improvements he desired to make by means of the money to be advanced by the corporation, recited that those moneys should be charged in accordance with the Improvement of Land Acts on the lands mentioned in the deed. Clause 1 provided that after the improvements had been sanctioned under the Acts, the contract should be absolute. Clause 2 provided for the assignment to the corporation of any absolute charge to which G. might become entitled in respect of the sanctioned improvements. Clause 5 provided that the sums advanced should be charged upon the land. Clause 7 provided that upon the Minister making the absolute order charging the land with the cost of the improvements, G. should transfer it to the corporation, who engaged to pay him the sums sanctioned by the Minister in respect thereof. On the 28th September, 1934, the Minister made a provisional order sanctioning the proposed improvements to be executed at a cost of £1,153 14s., and charged the land with that sum. Endorsed on the order was an assignment by G. to the corporation of this charge conferred upon

him by virtue of s. 27 of the Improvement of Land Act, 1864. M. & Co. did the work, and in January, 1935, wrote to the corporation regarding payment, and received the reply that when the Ministry issued the absolute order they would make arrangements for the completion of the loan and would have no objection to paying the account direct if G. had no objection. On the 11th March, 1935, M. & Co. wrote to G. asking his authorisation for a direct payment to them by the corporation, but on the same day a receiving order was made against G. The trustee in bankruptcy refused to authorise such payment. His Honour Judge Whitmore Richards held that the trustee in bankruptcy in taking the land was bound to implement the contract with the corporation and pay the sum raised to M. & Co. The trustee appealed.

CLAUSON, J., allowing the appeal, said that in April, 1934, G. was only willing to be bound by the contract if he obtained a loan to put him in funds to meet his obligations under it. Under the Improvement of Land Act, 1864, s. 27, a body which was now the Ministry of Agriculture, could charge property with the cost of improvements in favour of the owner who executed them. Unless he was a limited owner and not, as here, an absolute owner, there seemed no point in creating a charge in his favour upon his own land, but the reason for these transactions was probably that the lenders found it more advantageous to confine advances to cases where the Ministry of Agriculture had passed the improvements as proper. The loan was made on the terms that the corporation should stand in G.'s shoes as chargee. Nothing created a charge in favour of M. & Co., who never supposed G. would go bankrupt, and had they thought of it, could easily have secured from him a document creating a charge to secure the cost of the improvements. Before the bankruptcy, they had no equitable right to insist on the corporation paying them without G.'s consent. They were unsecured creditors, and the doctrine in *Ex parte James*, L.R. 9, Ch. 609, could not be applied in their favour. They gave credit to a man to whom they thought they could reasonably give credit, and now could not be put in the same position as if they had been more careful.

LUXMOORE, J., agreed.

COUNSEL: *W. Stable*, K.C., and *Allan Walmsley*; *C. N. Davis* and *A. Anderson*.

SOLICITORS: *Hamlins, Grammer & Hamlin*, agents for *R. G. Dell*, of Manchester; *Richardson, Sadler & Co.*, agents for *C. W. & F. H. Toone*, of Loughborough.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.

High Court—King's Bench Division.

Jutson *v.* Barrow.

Lord Hewart, C.J., Humphreys and Singleton, JJ.
25th October, 1935.

MEDICAL PRACTITIONERS—UNREGISTERED PERSON—"MANIPULATIVE SURGEON"—USE OF WORD "SURGEON"—MEDICAL ACT, 1858 (21 & 22 Vict. c. 90), s. 40.

Appeal by case stated against a decision of Paignton (Devon) Justices dismissing three informations laid by the appellant against the respondent alleging that, contrary to s. 40 of the Medical Act, 1858, he unlawfully, wilfully and falsely used the title of "surgeon," and so used it implying that he was recognised by law as a surgeon or that he was registered under the Act.

Outside the premises occupied by the respondent there was at material times a plate bearing the words "Captain H. Barrow, M.M., Manipulative Surgeon," which plate had been put up on the respondent's instructions. He allowed himself to be described as a "manipulative surgeon" in the telephone directory. He was not registered under the 1858 Act, his name had never appeared in the medical register, and he was not a legally qualified medical practitioner within the meaning of the Act. He never held any medical degree. The respondent treated fractures, deformations, injuries and disorders of the bones and joints by manual operation, and had for fifteen years used the word "surgeon," always preceded by "manipulative," to describe himself.

For the appellant it was contended (1) that the Act prohibited absolutely the use of the title "surgeon" by an unregistered person, (2) that the use of "manipulative" could not legalise the respondent's use of "surgeon," and (3) that *Whitwell* v. *Shakesby* (1932), 48 T.L.R. 489, was conclusive against the respondent. For the respondent it was contended, *inter alia*, (1) that the use of "surgeon" coupled with "manipulative" was lawful, and (2) that the use of the title "manipulative surgeon" did not imply that he was registered under the Act of 1858. The justices held that the use of the title was lawful because it described the work or craft which the respondent practised.

LORD HEWART, C.J., said that the Legislature had expressly taken the course of framing s. 40 of the Medical Act, 1858, in its twofold form. The section first prohibited the use by unregistered persons of certain specific and well-known descriptions, of which "surgeon" was one. It then went on to prohibit the use by such persons of any name or description implying that they were registered practitioners. The section regarded not the mind of the person using the name but the meaning likely to be conveyed by the name. His lordship referred to *Ladd* v. *Gould* (1860), 24 J.P. 357; *Ellis* v. *Kelly* (1860), 6 H. & N. 222; and *Andrews* v. *Styrap* (1872), 26 L.T. 704, and said that there was no clear judicial authority on the true interpretation of s. 40. In his (his lordship's) opinion, the effect of the section was to prohibit the use of the specified and well-known descriptions except in cases where they were lawfully employed; and if one of those descriptions were employed, a defendant could not be heard to say, borrowing the words of the latter part of the section, that the name which he used did not imply that he was registered under the Act. If a man was not a surgeon, he must not call himself one, and it was idle to argue here that the substantive "surgeon" had been used to qualify the adjective "manipulative." The titles "dental surgeon" and "veterinary surgeon" were expressly protected by statute. There were many other descriptions open to the respondent if he was sincere, which he (his lordship) assumed him to be, in not wishing to produce the prohibited effect, for instance, the title "manipulative healer." *Whitwell* v. *Shakesby*, *supra*, was conclusive against the respondent. There could be no addition to the word "surgeon" which would justify its use by an unregistered person. The appeal must be allowed, and the case remitted to the justices with directions to find the charges proved.

HUMPHREYS and SINGLETON, JJ., agreed.

COUNSEL: *R. P. Croom-Johnson*, K.C., and *G. D. Roberts*, for the appellant; *Norman Birkett*, K.C., and *J. D. Casswell*, for the respondent.

SOLICITORS: *Hempsons; Walter Crimp & Co.*, for *Stanley Richards & Co.*, Paignton.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

R. *v.* Murray.

Lord Hewart, C.J., Nacnaghten and Lewis, JJ.
25th November, 1935.

VENUE—ACCUSED COMMITTED TO ASSIZES NOT BEING THE ASSIZES FOR THE COUNTY WHERE CRIME COMMITTED—COMMITTAL TO CONVENIENT ASSIZES—POWERS—CRIMINAL JUSTICE ACT, 1925 (15 & 16 Geo. 5, c. 86), s. 14 (1)—S. R. & O., 1933, No. 745 (1).

Appeal against conviction.

The appellant was convicted at Northamptonshire Assizes on the 17th October, 1935, of indecent assault, and was sentenced to seven months' imprisonment by du Parcq, J. Before the appellant pleaded, a motion was made on his behalf to quash the indictment on the ground that he had wrongly

been committed to Northamptonshire Assizes. Section 14 (1) of the Criminal Justice Act, 1925, provides as follows: "The justices before whom any person is charged with an indictable offence, may, instead of committing him to be tried at the assizes . . . for a place to which but for this section he might have been committed, commit him to be tried at the assizes for some other place . . . if it appears to them . . . to be more convenient . . . with a view either to expediting his trial or saving expense: Provided that the power given by this sub-section shall not be exercised (*a*) unless the examining justices are satisfied at the date of the committal that the next assizes . . . to which but for this section he might be committed will not be held within one month from that date." The examining justices decided on 11th October, 1935, which was Commission Day for the Bedfordshire Autumn Assizes, to commit the accused for trial to the Northamptonshire Assizes which were to take place soon afterwards. It was contended for the appellant that under r. 2 of the Indictments (Procedure) Rules, 1933, made under s. 2 (6) of the Administration of Justice (Miscellaneous Provisions) Act, 1933, there was an implied power to commit the accused person to the Bedfordshire Autumn Assizes although they began on the day on which the accused was committed, and that the proviso to s. 14 (1) of the Criminal Justice Act, 1925, therefore operated to preclude the justices from committing the accused to the assizes of another county. Du Parcq, J., held that the motion failed, the trial proceeded, and the prisoner, having been convicted, appealed.

Macnaghten, J., in delivering the judgment of the court, said that the matter could be dealt with by saying that the word "next" in the proviso to s. 14 (1) plainly meant "next after the date of committal." Applying that construction to the present case, the next assizes for Bedfordshire were clearly the assizes beginning next after the 11th October, 1935, namely, the winter assizes, which would be held in January, 1936. The situation contemplated by the proviso to s. 14 (1) therefore did not arise and the sub-section itself applied. The justices were accordingly entitled to commit the appellant to Northamptonshire Assizes, since it was clearly more convenient that the trial should take place there than at Bedford in January, 1936.

Counsel: *S. Granville-Smith*, for the appellant; *C. L. Henderson*, for the Crown.

Solicitors: *Registrar of the Court of Criminal Appeal; Director of Public Prosecutions.*

[Reported by R. C. Calburn, Esq., Barrister-at-Law.]

High Court—Chancery Division.

In re Hector Whaling, Ltd.

Bennett, J. 2nd December, 1935.

Company—General Meeting—"Not less than Twenty-one Days' Notice"—Meaning—Companies Act, 1929 (19 & 20 Geo. 5, c. 23), s. 117 (2).

An extraordinary general meeting of the company was convened for the 30th May, 1935. The notice was served on the 8th May, and deemed to be served on the following day. At the meeting a special resolution for the reduction of capital was purported to be passed. The company now petitioned for confirmation of the reduction.

Bennett, J., in giving judgment, said that the question was whether the special resolution had been passed in accordance with the company's articles and s. 117 of the Companies Act, 1929. Section 117 (2) required "not less than twenty-one days' notice" of such a meeting. That meant twenty-one clear days exclusive of the day of service and the day on which the meeting was held. His lordship referred to *R.* v. *Turner* [1910] 1 K.B. 346, and *Chambers* v. *Smith*, 12 M. & W. 2. Having dealt with arguments based on the company's articles, he said that the special resolution had not been properly passed and adjourned the petition for a fresh meeting to be called.

Counsel: *Cohen*, K.C., and *T. D. Divine.*

Solicitors: *Lawrance, Messer & Co.*

[Reported by Francis H. Cowper, Esq., Barrister-at-Law.]

Witty *v.* World Service Limited.

Eve, J. 13th December, 1935.

Picture Puzzle Competition—Whether Illegal.

This was a motion for the purpose of obtaining a decision whether a certain competition advertised in November last in a weekly paper, known as the "Winner," offering a prize of £50 for the best solution of an illustrated picture puzzle, was within the prohibition contained in s. 26 (1) of the Betting and Lotteries Act, 1934. The plaintiff, a director of the defendant company, moved for an order that the defendants be restrained by injunction from conducting in the "Winner" any picture puzzle contest or other competition in which prizes were offered for the forecast of a future event or in which success did not depend to a substantial degree on the exercise of skill contrary to the provisions of ss. 22 and 26 of the Betting and Lotteries Act, 1934, and from keeping or using offices for the purpose of any money being received on behalf of the defendants as and for the consideration for any promise to pay any money on any event or contingency relating to any game or exercise contrary to the Betting Act. Counsel for the plaintiff said that the present action was brought as one of the results of the decision of a Divisional Court in *Coles* v. *Odhams Press Ltd*, Weekly Notes, 23rd November, p. 204, where the court held that a cross-word competition came within the prohibition of the section. Counsel submitted that on the evidence the present case came within that decision. He contended that the result here did not depend on any exercise of skill, and he referred to *Scott* v. *Director of Public Prosecutions* [1914] 2 K.B. 868.

Eve, J., in giving judgment, said that it was a case in which he was sorry to have to set up his own opinion against that of a tribunal perhaps more fitted to deal with it than he himself was. But having arrived at a conclusion which might or might not be right, he thought it right to state it. He asked himself whether the competition was one, success in which depended on the exercise of a substantial degree of skill. The framers of the competition must clearly have had in mind the previous decision in *Coles* v. *Odhams Press Ltd.*, *supra*. In his view the six pictures, the solution of which was doubtful, involved a considerable degree of skill in solving. No doubt there were some people to whom such problems did not present the same difficulties as they did to the ordinary mortal. It would not be easy to say what was the correct solution of one or two of them. In his opinion the competition to obtain success involved a reasonable degree of skill. He had already decided that it was not a "game" within s. 1 of the Betting Act, 1853. The result was that the motion which the parties had agreed to treat as the trial of the action failed and the action would be dismissed with costs.

Counsel: *P. B. Moyle*; *Beyfus*, K.C., and *Walter Frampton.*

Solicitors: *Samuel Coleman*; *Amery-Parkes & Co.*

[Reported by S. E. Williams, Esq., Barrister-at-Law.]

Court of Criminal Appeal.

R. *v.* Sugarman.

Lord Hewart, C.J., Humphreys and Singleton, JJ.
15th October, 1935.

Evidence—Cross-examination of Prisoner—Receiving Stolen Goods—Questions as to other Stolen Goods not found on Prisoner's Premises and as to which no Evidence.

Appeal against a conviction at the London Sessions on the 16th July, 1935.

On the 15th June, 1935, the appellants' premises were searched and there were found there, *inter alia*, three wireless sets, each forming part of a separate lot stolen previously, three accordions out of a lot of five stolen previously and 113 gowns out of a lot of 300 stolen previously. The appellant

was charged with having feloniously received the articles in question, and, at the trial, he put his character in issue, whereupon, in cross-examination, he was asked a series of questions suggesting that he had feloniously received other portions of the stolen lots (of which there was no evidence) and that £75 found on him when he was arrested had been obtained by him through selling those other portions. The accused having been convicted and sentenced by the chairman to twelve months' imprisonment with hard labour, appealed.

LORD HEWART, C.J., said that what had to be considered was not primarily with what purpose in the mind of the cross-examiner the questions complained of had been asked, but what effect they were likely to have on the minds of the jury. It had been said that the questions were put in order to test the credibility of the witness, by suggesting that he had received other stolen property beside that specified in the indictment. That was a remarkable proposition. It had been argued that if property recently stolen, but not specified in the indictment, had been found in the possession of the appellant, evidence might have been given to prove his possession of that property; and then, by a leap, the inference was drawn that, as other stolen property was not found in his possession, it might nevertheless be suggested to the jury that he had received other stolen property. It was impossible to escape the conclusion that those questions might well have conveyed to the jury the suggestion that the appellant had received stolen property other than that which was the subject of the charge and concerning the receipt of which the prosecution had no evidence, and, indeed, that he was a man who habitually had in his possession property which he knew to be stolen. The judgment of the House of Lords in *Maxwell* v. *Director of Public Prosecutions*, 103 L.J. K.B. 501, showed clearly that the questions in this case came within the mischief of the questions which in that case were held to be improper. They were not only likely to lead the minds of the jury astray on a false issue as to whether the appellant had feloniously received other stolen property, but they were also well calculated to make the jury think it probable that he had committed the offence with which he was charged. It could not too often be made plain that the business of counsel for the Crown was impartially to exhibit all the facts to a jury. The only interest of the Crown was that the truth should be known and justice be done. It would be deplorable if counsel should refuse to stand on the real strength of his case and think he could support it by things collateral, in a manner contrary to the letter and spirit of English law. The court had no alternative, whatever the merits or the demerits of the case, but to allow the appeal and quash the conviction.

HUMPHREYS and SINGLETON, JJ., agreed.

COUNSEL: *J. D. Cassels*, K.C. (*Henry Harris* with him), for the appellant; *J. F. Eastwood*, for the Crown.

SOLICITORS: *Bennett, Bennett & Rabin*, for the appellant; *Director of Public Prosecutions*.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

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Parliamentary News.

Progress of Bills.

House of Lords.

Campbeltown Harbour, Water and Gas Order Confirmation Bill.
Read Third Time. [18th December.

Dundee Corporation Order Confirmation Bill.
Read Third Time. [18th December.

Expiring Laws Continuance Bill.
Reported without Amendment. [18th December.

Hours of Employment (Conventions) Bill.
Read Second Time. [17th December.

Judiciary (Safeguarding) Bill.
Reported without Amendment. [17th December.

Public Works Loans Bill.
Read Second Time. [18th December.

Railways (Agreement) Bill.
Read Second Time. [18th December.

Road Traffic (Safeguarding of Public) Bill.
Read First Time. [18th December.

House of Commons.

Bridge of Allan Gas Order Confirmation Bill.
Read Third Time. [13th December.
Campbeltown Harbour, Water and Gas Order Confirmation Bill.
Read Third Time. [13th December.
Dundee Corporation Order Confirmation Bill.
Read Third Time. [16th December.
Edinburgh Corporation Order Confirmation Bill.
Read Second Time. [18th December.
Employment of Women and Young Persons Bill.
Read Second Time. [17th December.
Expiring Laws Continuance Bill.
Read Third Time. [12th December.
Government of India (Reprinting) Bill.
Read Third Time. [17th December.
National Trust for Scotland Order Confirmation Bill.
Read Third Time. [13th December.
Pensions (Governors of Dominions, etc.) Bill.
Read First Time. [17th December.
Public Works Loans Bill.
Read Third Time. [16th December.
Railways (Agreement) Bill.
Read Third Time. [17th December.
Rothesay Corporation Gas Order Confirmation Bill.
Read Third Time. [17th December.
Unemployment Assistance (Temporary Provisions) (Extension) Bill.
Reported without Amendment. [17th December.
Weights and Measures Bill.
Read First Time. [13th December.

Questions to Ministers.

COURTS OF JUSTICE (SHORTHAND WRITERS).

Mr. Dobbie asked the Attorney-General whether any decision has yet been come to on the question of the appointment of official shorthand writers in the King's Bench and for other divisions of the Courts of Justice.

The Attorney-General: The question involves many considerations which do not appear at first sight and it will not be possible to come fully to a decision in the matter until the Royal Commission to inquire into the state of business in the King's Bench Division has reported. [18th December.

CROWN PROCEEDINGS COMMITTEE.

Mr. Hall Caine asked the Attorney-General whether consideration will be given during the present Parliament to the introduction of legislation to implement the report of the committee of inquiry into the ability of private individuals to sue the Crown for damages due to the action of Government Departments or their officials.

The Attorney-General: I understand that the report, to which the hon. Member refers, is that of the Crown Proceedings Committee, which was presented in 1927. The report did not contain any recommendation as to the desirability or feasibility of this suggestion, and such information as I have does not lead me to think that there is any general agreement in favour of the hon. Member's proposal. [16th December.

MONEY PAYMENTS (JUSTICE PROCEDURE) ACT.

Mr. Buchanan asked the Secretary of State for Scotland whether he has considered the applying of the provisions of the Money Payments (Justice Procedure) Act to Scotland; and, if so, what action he proposes taking.

Sir G. Collins: During recent months I have been collecting information on this subject. When my inquiries are completed I shall consider how far they reveal a need for an amendment of the law of Scotland relating to imprisonment in default of payment of fines. [17th December.

TRIAL OF PEERS.

Mr. Garro-Jones asked the Attorney-General whether he is aware that the Lord Chancellor has expressed disapproval of the existing process of trial of a peer indicted of felony; whether this represents the policy of the Government; and if so, whether any steps are in contemplation to abolish it.

The Attorney-General: I have ascertained that my Noble Friend the Lord Chancellor did not express disapproval of the existing process of trial of a peer indicted for felony, though he has expressed the opinion that there was a good deal to be said for taking the view that this manner of trial had outlived its usefulness, and that the opinion of their Lordships in another place on that matter would be welcome. As to the latter part of the question I should prefer to postpone any statement until the matter can be further considered. [17th December.

LEGAL EDUCATION COMMITTEE.

Sir A. Wilson asked the Attorney-General what, if any, steps are in contemplation to give effect to the recommendations contained in the report of the Legal Education Committee (Cmd. 4663).

The Attorney-General: In accordance with the recommendations of the Legal Education Committee, steps have been taken to set up a Standing Advisory Committee to which questions relating to legal education can be referred for consideration. The question of the establishment of an Institute of Legal Research is under consideration. [17th December.

MARRIED WOMEN'S PROPERTY ACT.

Miss Rathbone asked the Secretary of State for the Home Department whether his attention has been drawn to a case tried at the Leeds police court on 22nd November, when a man was charged with forging his wife's signature on two cheques for £120 and £140 respectively, and the charge was withdrawn owing to the view taken by the magistrate, and acquiesced in by the prosecuting solicitor, that the man could not be charged with forging or cashing cheques on his wife's account unless there was evidence that he had either deserted her or was contemplating desertion; and will he introduce legislation to prevent the intention of the Married Women's Property Act being frustrated in this manner.

The Under-Secretary of State for the Home Department (Mr. Geoffrey Lloyd): I have seen newspaper reports from which it appears that the magistrate, though he did not himself feel able to commit the defendant for trial, suggested that application might be made to a Judge of the High Court for leave to prefer a bill of indictment. It would accordingly be premature to consider at this stage whether there is a case for amending legislation. [16th December.

Societies.

The Auctioneers' and Estate Agents' Institute.

ANNUAL DINNER.

The annual dinner of the Auctioneers' and Estate Agents' Institute of the United Kingdom was held at the Connaught Rooms, London, on Thursday, 5th December, the President, Mr. Herbert H. Robinson, being in the chair. There was a record attendance of members and guests.

After the loyal toasts had been honoured, The Right Hon. The Earl of Radnor proposed the toast of "The Institute." Although, he said, he was there as a guest that night, he was also—and he felt honoured to be so—an honorary member of their Institute. The House of Parliament, of which he was a member, had recently, through a Select Committee, taken an active interest in the standard of professional conduct in the business with which they were concerned, and their conclusions had been published in the Institute's Journal. At the present time they saw more and more interference by Parliament in the affairs of the land, and he was afraid they must expect more in the future. In his opinion the trouble lay with successive Governments, which had taxed the landowner to such a degree that he had not been able to perform his proper function, which was not only to make what money he could out of the land, but also to consider, as was his right and privilege, the interests of the community at large. The big landowners had disappeared, and he believed they were the best planners they had ever had. The break-up of the big estates had greatly increased the number of people in land-ownership, many of whom, although wishing to do the right thing, had no experience of such ownership. That was where members of their profession performed a function which was of the greatest importance to the whole country, because they had in their hands the opportunity of advising those who owned the land.

The President, replying, said that it was nearly half a century since the Institute was founded for the elevation of the status of the profession. It was, he said, not so much their object to get more members into the Institute, as to get more of the principles of the Institute into their members. In a large measure their members acted as tax-gatherers of the national and local exchequers, and they were in a position to observe the disastrous results of excessive death duties and high taxation, which had had so much to do with the decay

of rural England. Many country mansions had had to be closed, and the disappearance of the old squires, who shared in the joys and sorrows of those living on their estates, had been a serious loss to the whole countryside.

The recent proposals of the London County Council for the rating or partial rating of empty property had received the careful consideration of the Parliamentary Committee and of the Council of the Institute, and a reasoned memorandum had been prepared and sent to the Ministry of Health and other public departments and to members of Parliament. The proposals effected a fundamental change in the principles of local taxation, and the Institute was of the opinion that amendments of such far-reaching importance should be introduced by means of national legislation, and should not be submitted by one local authority, no matter how important that authority might be. While it might be admitted that there were a few owners who were obstinate and unreasonable and held out for excessive rentals, they were in a very small minority. Most owners were only too anxious to let their premises at reasonable rents. The reason for so many vacant properties was primarily the lack of tenants. In the opinion of their Council it was desirable that the basic principle of the rating of beneficial occupation only should remain unchanged and the proposals would defeat their own object, and, over a period, be of no real advantage either to the local authority or to the ratepayer; moreover, the practical difficulties of administration would be almost insuperable. In view of all that, the hope had been expressed that Parliament would not give the proposed Bill a second reading.

The time was approaching, he continued, when the present system of local rating would have to receive the serious attention of the Government, far too many burdens had been placed upon the narrow basis of the rateable value of property. The cost of education and the relief of unemployment were charges of a national character and were much too heavy a burden for the ratepayers in distressed areas to bear.

The President concluded his speech by paying a tribute to the Assistant Secretary, Mr. F. M. Sydenham, who had loyally served the Institute for upwards of forty-one years and was retiring on pension at the end of the year. The informal toast of the health of the Assistant Secretary was drunk with acclamation, and Mr. Sydenham briefly replied.

"The health of the Guests" was proposed by Mr. Hubert Alexander, Vice-President of the Institute, and the response was made by Mr. George B. Hanna, K.C., M.P., Parliamentary Secretary, Ministry of Home Affairs, Northern Ireland, and Mr. Harry M. Stanley, President, Chartered Surveyors' Institution.

Society of Comparative Legislation.

DINNER TO LORD MACMILLAN.

This Society gave a dinner to LORD MACMILLAN on the 2nd December, at the Savoy Hotel, to celebrate his return from a fruitful visit to the three great South American Republics of Argentina, Uruguay and Brazil. Lord Atkin took the chair and, after the gathering had honoured the health of the King and that of the President of the Republic of Brazil, proposed the health of "The Guest of the Evening." He said that Lord Macmillan had returned from a pilgrimage, though what he could have taken as his scrip baffled description. He had from time to time been acquainted with railways, finance, banking, street offences, industrial psychology and hospitals, but had gone out to talk about law —presumably Scots law. In South America the diplomatic bags were still bulging with enquiries for the meaning of "multiplepoinding," "diligence against havers," and "declarator of tinsel of superiority." Lord Macmillan's experience of the Privy Council had been of great advantage to him in discussing law with his foreign hosts. It was difficult in a society which dealt with comparative law and comparative legislation, to ignore the position of a man who, like Lord Macmillan, was a member of a body which dealt justice to about 400,000,000 people and administered four or five codes of jurisprudence, some of them dating from primæval times. Starting with the Pentateuch and comparing it with the Hindu, the Mohammedan or any other branch of law, the student would probably find that the difference lay rather in constitutional matters or administrative law, or that of real property; he would find prevailing in every country the same eternal principles of justice, which lawyers in every country were anxious to carry out to the fullest extent.

A LEGAL PILGRIM IN LATIN AMERICA.

LORD MACMILLAN, in reply, said that he could only take it as a token of his friends' kindly goodwill that they should give him a dinner for having had a most delightful holiday. He had returned from the most interesting exploration of his life. Although primarily he was accredited to the legal fraternity and the university representatives of the three Republics, he had had opportunities of making many friendships among all sections of the community. To be a member of the legal profession seemed a sort of open sesame to all doors. He had seen the genius of the law acclimatising itself from old doctrines to new conditions and making new developments under different auspices. In the Argentine he had been received by the Supreme Court of five judges, with whom he had carried on a delightful conversation, finding that the common law and code law did not differ so much at bottom. Buenos Ayres had a most active law school, the publication of which exhibited advanced legal scholarship. Its great libraries were magnificently equipped with all the most modern legal literature. The law school of Montevideo in Uruguay was no less lively, and the Dean, Senhor Goyena, had asked him if he could supply the lawyers of Uruguay with a complete series of papers showing the procedure in an English common law action and in a criminal case. He had been created a member of the Uruguay Bar.

His visit to Brazil had been the climax of the odyssey. In Sao Paolo he had found a great city of a million inhabitants with no unemployment. In Rio de Janeiro he had attended a sitting of the Corte Suprema and had sat with this impressive court of eleven judges in plenary session. They had worn black silk costumes of old ecclesiastical cut, without a wig. On all sides he had heard expressions of the greatest friendliness to this country and its system of justice. If his mission had accomplished nothing else he had at any rate assured the Brazilians how ready the people of England were to reciprocate their friendship. He concluded by a warning that no nation could isolate itself in an anchorites' cell. Nations had to live together, and the best method for overcoming the distrust and want of confidence that created barriers was to share intellectual interests—in art, literature and all those things of the mind which formed the best basis of friendship and fellowship. Nowhere more than in South America would the cultural heritage of the Old World find a warmer welcome. Formerly the South American Republics had come to London for money to finance their vast enterprises of development. London had other assets, and could provide them with interests in art, history and literature as generously as in the past it had provided financial resources.

THE SOCIETY'S WORK.

His Excellency the Ambassador of Brazil, Senhor DON REGIS DE OLIVEIRA, then proposed the health of the Society of Comparative Legislation. He said that everyone who had met Lord Macmillan had immediately been captivated by his outstanding personality and had become his friend and an admirer of his knowledge and culture. His visit was the best possible first step for the forthcoming intellectual *rapprochement* of the two countries. He thanked the Society for the great help which it gave to other countries, especially by means of its information on the forms and methods of legislation in the British Empire and the United States and on subjects which covered practically every branch of law and touched all the great social, political and economic problems of civilisation. No one could fail to appreciate the value of a body which studied the results of experiments in foreign countries, often imperfectly known, and brought them to the notice of those who could profit by them and use them to avoid mistakes.

Professor H. C. GUTTERIDGE, K.C., in reply, said that a frequent source of misunderstanding between nations had been linguistic; unless great care was exercised when international conventions were drawn up, trouble might be caused by confusion of terminology. Many words meant one thing in French and another in English, and to assume that the meaning was the same in both languages was dangerous. The Society was collaborating with the English Section of the International Chamber of Commerce in collecting information on the commercial laws of different countries and in standardising trade terms. It also worked to spread knowledge of English law on the Continent. The conditions in certain European countries at present were more favourable to the acceptance of some of the doctrines of English law than they were ever likely to be again. The more support the Society received, the more of this useful work it could do.

LORD ASKWITH then proposed the health of the Chairman. He said the Government, being somewhat afraid of Lord Atkin, had popped him into the House of Lords. When he murmured a few sentences their lordships strained their ears to hear him, and if they had enough knowledge to understand what his meaning was they were very apt to follow his advice.

LORD ATKIN, in reply, said that many people in the country did not realise the wonderful services which Lord Askwith had rendered as a conciliator in industrial disputes.

Among those present were: Lady Macmillan, H. E. the Ambassador of Brazil and Madame Regis de Oliveira, Lord Alness, Lord Askwith, Lord Atkin, Lord Blanesburgh, Lord

and Lady Luke, Lord and Lady Maugham, The Master of the Rolls and Lady Wright, Lord Justice Scott, Mr. Justice and Lady Clauson, Mr. Justice and Lady Macnaghten, Sir Maurice Amos, K.C., Sir Harry Courthope-Munroe, K.C., Sir W. M. Graham-Harrison, K.C., Sir Herbert Lush-Wilson, K.C., Sir William Malkin, K.C., Sir T. Dawson Miller, K.C., Sir Frederick Pollock, K.C., Sir Algernon and Lady Aspinall, Sir Chartres Biron, Sir Edwin Deller, Sir William Gowers, Sir John Power Wallis, Judge and Mrs. Konstam, Judge Sturges, K.C., Mr. J. Arthur Barratt, K.C., Mr. Gilbert Beyfus, K.C., and Mrs. Beyfus, Mr. Kenneth Carpmael, K.C., Mr. T. M. Cooper, K.C., Mr. Clement Davis, K.C., Mr. F. Raymond Evershed, K.C., Professor H. C. Gutteridge, K.C., Mr. Hector Hughes, K.C., Mr. E. J. MacGillivray, K.C., and Mrs. MacGillivray, Mr. H. F. Manisty, K.C., Mr. R. M. Montgomery, K.C., and Mrs. Montgomery, Mr. Richard O'Sullivan, K.C., and Mr. W. Bruce Thomas, K.C.

The Chadwick Trust.

TOWN AND COUNTRY PLANNING AND THE HOUSING ACT OF 1935.

Mr. R. C. Maxwell, LL.D., a past President of the Town Planning Institute, delivered on the 3rd December in the Inner Temple Hall the last of the Chadwick Public Lectures for this year on "Town and Country Planning and the Housing Act of 1935." The chair was occupied by Mr. W. Addington Willis, one of the Chadwick trustees.

Mr. Maxwell pointed out that the Housing Acts, 1930 and 1935, and the Town and Country Planning Act, 1932, gave local authorities a unique opportunity of co-ordinating and promoting town and country planning and the garden city movement. The Planning Act, he said, empowers authorities to make schemes with the general object of controlling the development of land, securing proper sanitary conditions, amenities and convenience, preserving existing buildings or other objects of architectural, historical or artistic interest or places of natural interest or beauty, and generally of protecting existing amenities. The powers given by the Act are very wide; a scheme may provide that land shall be allocated to the use for which it is best fitted, and may permanently restrict the use of unfit land and temporarily restrict areas not ripe for development. It may provide for new streets, public open spaces and playing fields, and may permanently reserve private parks, sports grounds and other "private open spaces." It may set aside land for allotments, cemeteries and aerodromes, and for practically any other purpose. A scheme could be used, he said, to relieve traffic congestion by widening existing roads, building new roads and closing unsuitable roads. It could prevent congestion increasing by restricting changes that would cause additional traffic, or preventing redevelopers from increasing the number or size of buildings unless they also provide suitable ground space to deal with the extra traffic the changes will create. A scheme may provide for parking places in suitable relation to the road plan and business centres; for playgrounds, expecially in working-class areas; for adding needful open land to present industrial areas; or for re-assorting municipal buildings and planning new civic centres. It should be possible also, by restricting the height of buildings, to prevent one building from robbing another of light and air.

The Housing Act of 1930 enabled local authorities to clear slum areas and demolish unfit houses and obstructive buildings. The Act of 1935 provides for a survey of working-class houses throughout the country and a report by every local authority of the overcrowding in its area. Local authorities are later to submit definite proposals for the accommodation of those persons who will be displaced. This must involve a considerable building programme, and there is a danger that, under the pressure of the "five years' plan," schemes of demolition and re-housing may be carried out without regard to planning considerations.

The Need for a Wider View.

The combined powers which the three Acts give to local authorities provide them, he continued, with a unique opportunity of re-planning and re-developing their urban areas and centres and of fitting in such re-development with a general planning scheme. Planning has hitherto been largely on restrictive lines, but a bold policy is required, with more positive planning. The Ministry might well, in addition to its useful memoranda, issue model schemes, dealing with various possible types of planning and re-development. Local authorities would welcome visits of officers of the Ministry with practical knowledge, to confer with representatives of their town-planning, housing and public health committees. The fear of incurring unknown liabilities is an obstacle to progress. While no public purpose which is worth while can be carried out for nothing, money is cheap, and local authorities can borrow at low rates of interest. Another obstacle is the semi-independent character and working of the different committees, particularly those of the larger boroughs and urban districts, and the absence of adequate co-operation between them. A sound planning scheme can only be made in pursuance of a master plan by one committee of the local authority, delegating detailed work to the particular committee concerned. Local authorities should take advantage of the many highly-qualified architects, surveyors and engineers who have made a life study of planning, instead of relying on already busy officers. The outlook for planning seems hopeful; all reasonably necessary powers are in existence, and public opinion will support bold schemes.

The Hardwicke Society.

A meeting of the Society was held on Friday, 13th December, at 8.15 p.m., in the Middle Temple Common Room, the President, Mr. T. H. Mayers, in the chair. Mr. A. A. Baden Fuller moved: "That this House has no confidence in His Majesty's Government." Mr. G. E. Llewellyn Thomas (hon. secretary) opposed. There also spoke: Mr. T. K. Wigan, Mr. A. L. Ungoed Thomas, Mr. Krusin, Mr. Bucher, Mr. J. A. Petrie (hon. treasurer), Mr. Clapham, Mr. Schaefer, Mr. Bentliffe and Mr. Roope. The hon. mover having replied, the House divided and the motion was carried by three votes.

Law Students' Debating Society.

At a meeting of the Society held at The Law Society's Court Room, on Tuesday, 17th December (Chairman, Mr. R. W. Jackling), the subject for debate was "That this House deplores the decision of the Judicial Committee in *Grant* v. *Australian Knitting Mills Limited* [1935], W.N. 178, and 52 T.L.R." Mr. K. E. Allanson opened in the affirmative; Mr. G. A. Russo opened in the negative. Mr. R. A. Finn seconded in the affirmative; Mr. K. A. Wyndham-Kaye seconded in the negative. The following also spoke: Messrs. C. O'Connor, F. G. Timmins, R. Landman, G. A. Kemp, J. P. R. Oakes, and G. G. Jeudwine. The opener having replied, and the Chairman having summed up, the motion was lost by two votes. There were fifteen members and four visitors present.

Legal Notes and News.

Honours and Appointments.

The King has been pleased to approve a recommendation of the Home Secretary that Mr. F. P. M. Schiller, K.C., be appointed Recorder of Bristol, to succeed the late Mr. Stuart Bevan, K.C. Mr. Schiller, who was called to the Bar by the Inner Temple in 1893, has been Recorder of Southampton since 1928.

His Honour Judge Sir Alfred Tobin, K.C., will retire from his office as a County Court Judge on the 31st December, 1935. The Lord Chancellor has made the following arrangements to take effect on the 1st January, 1936:—

His Honour Judge Sir Mordaunt Snagge, of Cedar House, Iver, Bucks, to be the Judge of the Westminster County Court of Middlesex.

His Honour Judge Woodcock, K.C., of 8 Netherall Gardens, Hampstead, N.W.3, to be the Judge of the Marylebone County Court of Middlesex.

His Honour Judge Stewart, of Kirkby Wharfe, Tadcaster, to be the Judge of the County Courts on Circuit No. 14 (Leeds, etc.).

Mr. A. Everett, of Harbledown, has been appointed Town Clerk of Queenborough, Kent, in succession to Mr. E. C. Harris, who is to be made freeman of the borough in recognition of his long and faithful service. Mr. Harris was admitted a solicitor in 1891.

Professional Announcements.

(2s. per line.)

Solicitors & General Mortgage & Estate Agents Association.—A link between Borrowers and Lenders, Vendors and Purchasers.—Apply, The Secretary, Reg. Office: 12, Craven Park, London, N.W.10.

Notes.

The annual dinner of the Medico-Legal Society was held at the Holborn Restaurant on the 13th December. The President (Mr. C. Ainsworth Mitchell) presided.

Mr. K. R. England has been elected President of the Incorporated Society of Auctioneers for 1936, and will take office at the general meeting in March.

Mr. Everard Dickson, the Metropolitan Police Magistrate, gave an address to the Portsmouth and District Medical Association on the 13th December on "Criminal Responsibility."

Mr. C. P. Grobel, solicitor, has been elected to fill a vacancy on Finchley Borough Council, as an Independent. Mr. Grobel, who was admitted a solicitor in 1927, practises in St. Martin's-lane, W.C., Harlesden, Finchley and Golders Green.

The next Quarter Sessions of the Peace for the Borough of Wolverhampton will be held at the Sessions Court, Town Hall, North Street, Wolverhampton, on Friday, the 10th day of January, 1936, at 10 o'clock in the forenoon.

Mr. Charles F. Monckton has been presented with a silver salver and a diamond ring by the members of the Court of Lieutenancy of the City of London to commemorate his thirty-five years of service as Clerk. Mr. Monckton was admitted a solicitor in 1887.

Mr. Ernest F. Lever, Barrister-at-Law, of the Inner Temple, who died recently, has left £5 in his will to the girl who sold him his newspapers for many years. Miss Polly Cole, the legatee in question, has a newspaper stall in Fleet-street, at the entrance to the Inner Temple.

The Report of the Departmental Committee on International Copyright, the appointment of which was announced by the Board of Trade on the 11th May last, was published on the 19th December, and copies may be obtained from His Majesty's Stationery Office, Adastral House, Kingsway, W.C.2, or through any bookseller, price 1s.

At a meeting of the Council of The Law Society, the scholarship for 1935 was, on the recommendation of the trustees of the late Joseph Travers Smith, awarded to Mr. William Michael Baker, who served his articles of clerkship with Mr. Bernard Richard Everett, Mr. Edgar Charles Chancellor and Mr. Albert Fletcher, of the firm of Messrs. Stoneham & Sons, London.

In consequence of the impending retirement, owing to the age limit, of Mr. F. M. Sydenham, who has been Assistant-Secretary of the Auctioneers' and Estate Agents' Institute for many years, the post has been filled by the appointment of Mr. J. M. Wolstenholme, B.Sc. (Assistant-Secretary of the Incorporated Society of Auctioneers). Mr. S. T. Killick (assistant to the Secretary of the Institute of Municipal Treasurers and Accountants) has been selected by the Incorporated Society of Auctioneers for the post rendered vacant by reason of Mr. Wolstenholme's appointment.

A special meeting of the Insurance Institute of London was held in London on Wednesday to confirm alterations in the constitution of the Institute to provide for the fusion of that body with the Institute of National Insurance to come into effect on 1st January. The President of the Institute, Mr. W. Palin Elderton, who proposed that the new constitution and bye-laws should be approved, said that a revision had become necessary because of the fusion of the Faculty of Insurance with the Chartered Institute, and the consequent arrangement whereby those engaged in National Insurance in its various branches were to become members of their Institute. The new constitution was approved.

Wills and Bequests.

Mr. Richard Borrough Hopkins, solicitor, of Leeds, left £93,300, with net personalty £73,692.

Mr. Albert John Tucker, solicitor, of Exeter, left £15,261, with net personalty £14,029.

A further grant of probate in respect of settled lands valued at £5,000 has been issued in the estate of Sir William Claude Fawcett, solicitor, of Stainton-in-Cleveland, Yorks, who left unsettled estate already valued at £13,770, making a total of £18,770.

Mr. George Ernest Hart, solicitor, of Bexhill-on-Sea, and of Uckfield, left £13,456, with net personalty £9,756.

Mr. William Henry Jopling Ryder, solicitor, of Monkseaton, left £63,190, with net personalty £61,513.

Mr. Edward Meade, retired solicitor, of Marks Cross, Sussex, left estate of the gross value of £28,655, with net personalty £26,551. He left £100 to the Sussex Archæological Society; £100 to the National Trust; £200 to Epsom College; £100 to the National Benevolent Institution; £100 to the Solicitors' Benevolent Association.

Mr. James Foyster Bowen, solicitor, of Chislehurst, left £72,571, with net personalty £57,099.

Mr. Eustace John Harvey, solicitor, of Highgate, left £23,866, with net personalty £21,906.

Mr. William John Masters, solicitor, of Swindon, left £11,485, with net personalty £10,269.

Major John Woodman-Smith, solicitor, of Ockley, left so far as can at present be ascertained £14,029 (net personalty nil).

Mr. George Alexander Wright, solicitor, of Edinburgh, left personal estate valued at £16,320.

Mr. Francis William Eland Hobson, solicitor, of Reigate, formerly of Chancery-lane, left £36,267, with net personalty £36,185.

Mr. Robert Ralph Coucher Yates, solicitor, of West Bromwich, left £16,614, with net personalty £16,380.

Mr. Harvey Birch, solicitor, of Llangollen, left £19,053, with net personalty £18,012.

Mr. Albert Roy Hamilton Akaster, solicitor, of Stoke, Devonport, left £16,644, with net personalty £14,653.

Mr. William Bentley, retired solicitor, of Edgbaston, left estate of the gross value of £19,751, with net personalty £19,000. He left his collection of archaic and other musical instruments to the Birmingham and Midland Institute.

Mr. Samuel Burridge, solicitor, of Plymouth, left £17,206, with net personalty £17,141.

Mr. Myer Barnett Lee, solicitor, of Bromley and Cannon Street, E.C., left £13,370, with net personalty £10,005.

NOTICE TO CONTRIBUTORS.

The Editor will be pleased to consider for publication contributions and correspondence from any professional source upon matters of legal interest.

All contributions (including correspondence) should be typewritten and on one side of the paper only, and must be accompanied by the name and address of the contributor.

The Editor is unable to accept any responsibility for the safe custody of contributions submitted to him, and copies should therefore be retained. The Editor will, however, endeavour in special circumstances to return unsuitable contributions within a reasonable period, if a request to this effect and a stamped addressed envelope are enclosed with the manuscript.

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Court Papers.

Supreme Court of Judicature.

ROTA OF REGISTRARS IN ATTENDANCE ON

DATE.	EMERGENCY ROTA.	APPEAL COURT No. 1.	GROUP I. MR. JUSTICE EVE. Non-Witness.	GROUP I. MR. JUSTICE BENNETT. Witness. Part I.
Dec. 23	Mr. Hicks Beach	Mr. Ritchie	Mr. Jones	Mr. Blaker
	GROUP I. MR. JUSTICE CROSSMAN. Witness. Part II.	MR. JUSTICE CLAUSON. Witness. Part II.	GROUP II. MR. JUSTICE LUXMOORE. Witness. Part I.	MR. JUSTICE FARWELL. Non-Witness.
,, 23	Mr. Hicks Beach	Mr. Ritchie	Mr. Andrews	Mr. More

*The Registrar will be in Chambers on these days, and also on the days when the court is not sitting.

The CHRISTMAS VACATION will commence on Tuesday, the 24th day of December, 1935, and terminate on Monday, the 6th day of January, 1936, inclusive.

A UNIVERSAL APPEAL

TO LAWYERS: FOR A POSTCARD OR A GUINEA FOR A MODEL FORM OF BEQUEST TO THE HOSPITAL FOR EPILEPSY AND PARALYSIS, MAIDA VALE, W.9.

Rules and Orders.

THE COUNTY COURT FEES (AMENDMENT) ORDER, 1935. DATED NOVEMBER 27, 1935.

The Lord Chancellor and the Treasury, in pursuance of the powers and authorities vested in him and them respectively by section 165 of the County Courts Act, 1888,* as amended by the County Courts Act, 1924,† section 2 of the Public Offices Fees Act, 1879,‡ and section 305 of the Companies Act, 1929,§ do hereby, according as the provisions of the above mentioned enactments respectively authorise and require him and them, make, concur in, and sanction the following Order :—

1. In this Order a Fee referred to by number means the Fee so numbered in the table of Fees contained in the Schedule to the County Court Fees Order, 1931,‖ as amended by the County Court Fees (Amendment) Order, 1934.¶

2. In the heading to Section VII of the table after the expression " Miscellaneous Fees " there shall be inserted the following paragraph :—

For the purpose of calculating poundage in this Section, a fraction of a pound shall be treated as an entire pound.

3. The following fee shall be added in the table :—

First Column. No. of Fee.	Second Column. Description of proceeding.	Third Column. Amount of Fee.
95	(i) For keeping an account of a deposited or invested Fund in Court which has not been dealt with (otherwise than by the continuous investment or placing on deposit of interest) for at least fifteen years, and has been paid over to the Accountant-General pursuant to Rule 36 of the County Court Funds Rules, 1934** *Note.*—This fee is payable out of the Fund in Court at the end of the period, and is to be calculated on the amount of the Fund, or, in the case of stock, on the value of the stock.	For every £, 3d.
95	(ii) For keeping an account of money in Court t othe credit of a suitor which has not been dealt with for at least five years, and has been paid over to the Accountant-General pursuant to Rule 36 of the County Court Funds Rules, 1934. *Note.*—This fee is payable out of the money in Court at the end of the period and is to be calculated on the amount of the money.	Fee No. 95 (i).

4.—(1) This Order may be cited as the County Court Fees (Amendment) Order, 1935.

(2) The County Court Fees Order, 1931, as amended by the County Court Fees (Amendment) Order, 1934, shall have effect as further amended by this Order.

(3) This Order shall come into operation on the 31st day of December, 1935.

Dated the 27th day of November, 1935.

Hailsham, C.

James Stuart } Lords Commissioners of
Archibald R. J. Southby, } His Majesty's Treasury.

* 51 & 52 Vict. c. 43.
‡ 42 & 43 Vict. c. 58.
‖ S.R. & O. 1931 (No. 487) p. 184.
** S.R. & O. 1934 (No. 1315) I, p. 272.
† 14 & 15 Geo. 5. c. 17.
§ 19 & 20 Geo. 5. c. 23.
¶ S.R. & O. 1934 (No. 1401) I, p. 270.

A divorce case in which an anonymous letter had been sent to the court came before Mr. Justice du Parcq at Birmingham Assizes last Tuesday. His lordship observed : " If people write letters and they are found to be true something may come of them. If they are untrue I think the writers will run great risk if their identity is discovered of proceedings being taken against them."

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (30th June, 1932) 2%. Next London Stock Exchange Settlement, Thursday, 9th January, 1936.

	Div. Months.	Middle Price 18 Dec. 1935.	Flat Interest Yield. £ s. d.	‡Approximate Yield with redemption £ s. d.
ENGLISH GOVERNMENT SECURITIES				
Consols 4% 1957 or after	FA	116	3 9 0	2 19 3
Consols 2½%	JAJO	86½	2 17 10	—
War Loan 3½% 1952 or after	JD	106	3 6 0	3 0 11
Funding 4% Loan 1960-90	MN	117½	3 8 1	2 19 4
Funding 3% Loan 1959-69	AO	102½	2 18 6	2 17 1
Victory 4% Loan Av. life 23 years	MS	115¾	3 9 1	3 0 8
Conversion 5% Loan 1944-64	MN	120	4 3 4	2 4 9
Conversion 4½% Loan 1940-44	JJ	110¾	4 1 3	2 7 6
Conversion 3½% Loan 1961 or after	AO	107½	3 5 1	3 1 4
Conversion 3% Loan 1948-53	MS	104½	2 17 5	2 11 2
Conversion 2½% Loan 1944-49	AO	102	2 9 0	2 4 7
Local Loans 3% Stock 1912 or after	JAJO	96	3 2 6	—
Bank Stock	AO	371½	3 4 7	—
Guaranteed 2¾% Stock (Irish Land Act) 1933 or after	JJ	87	3 3 3	—
Guaranteed 3% Stock (Irish Land Acts) 1939 or after	JJ	95	3 3 2	—
India 4½% 1950-55	MN	114½	3 18 7	3 3 11
India 3½% 1931 or after	JAJO	97½	3 11 10	—
India 3% 1948 or after	JAJO	86½	3 9 4	—
Sudan 4½% 1939-73 Av. life 27 years	FA	120	3 15 0	3 7 3
Sudan 4% 1974 Red. in part after 1950	MN	115½	3 9 3	2 14 7
Tanganyika 4% Guaranteed 1951-71	FA	115	3 9 7	2 15 4
L.P.T.B. 4½% "T.F.A." Stock 1942-72	JJ	109½	4 2 2	2 15 1
COLONIAL SECURITIES				
Australia (Commonw'th) 4% 1955-70	JJ	108	3 14 1	3 8 10
*Australia (C'mm'nw'th) 3¾% 1948-53	JD	103	3 12 10	3 9 3
Canada 4% 1953-58	MS	111	3 12 1	3 3 8
*Natal 3% 1929-49	JJ	100	3 0 0	3 0 0
*New South Wales 3½% 1930-50	JJ	101	3 9 4	—
*New Zealand 3% 1945	AO	99	3 0 7	3 2 6
Nigeria 4% 1963	AO	114	3 10 2	3 4 8
*Queensland 3½% 1950-70	JJ	101	3 9 4	3 8 2
South Africa 3½% 1953-73	JD	107	3 5 5	2 19 5
*Victoria 3½% 1929-49	AO	102	3 8 8	—
CORPORATION STOCKS				
Birmingham 3% 1947 or after	JJ	96	3 2 6	—
*Croydon 3% 1940-60	AO	100	3 0 0	3 0 0
Essex County 3½% 1952-72	JD	104½	3 7 0	3 3 1
Leeds 3% 1927 or after	JJ	92½	3 4 10	—
Liverpool 3½% Redeemable by agreement with holders or by purchase	JAJO	105	3 6 8	—
London County 2½% Consolidated Stock after 1920 at option of Corp.	MJSD	83	3 0 3	—
London County 3% Consolidated Stock after 1920 at option of Corp.	MJSD	96	3 2 6	—
Manchester 3% 1941 or after	FA	96	3 2 6	—
*Metropolitan Consd. 2½% 1920-49	MJSD	100½	2 9 9	—
Metropolitan Water Board 3% "A" 1963-2003	AO	98	3 1 3	3 1 5
Do. do. 3% "B" 1934-2003	MS	98	3 1 3	3 1 5
Do. do. 3% "E" 1953-73	JJ	100xd	3 0 0	3 0 0
†Middlesex County Council 4% 1952-72	MN	114	3 10 2	2 18 10
† Do. do. 4½% 1950-70	MN	117	3 16 11	3 1 4
Nottingham 3% Irredeemable	MN	95	3 3 2	—
Sheffield Corp. 3½% 1968	JJ	103½xd	3 7 8	3 6 4
ENGLISH RAILWAY DEBENTURE AND PREFERENCE STOCKS				
Gt. Western Rly. 4% Debenture	JJ	112xd	3 11 5	—
Gt. Western Rly. 4½% Debenture	JJ	122½xd	3 13 6	—
Gt. Western Rly. 5% Debenture	JJ	134½xd	3 14 4	—
Gt. Western Rly. 5% Rent Charge	FA	133½xd	3 14 11	—
Gt. Western Rly. 5% Cons. Guaranteed	MA	132½	3 15 6	—
Gt. Western Rly. 5% Preference	MA	118½	4 4 5	—
Southern Rly. 4% Debenture	JJ	112	3 11 5	—
Southern Rly. 4% Red. Deb. 1962-67	JJ	111½	3 11 9	3 7 0
Southern Rly. 5% Guaranteed	MA	133½	3 14 11	—
Southern Rly. 5% Preference	MA	118½	4 4 5	—

*Not available to Trustees over par. †Not available to Trustees over 115.
‡In the case of Stocks at a premium, the yield with redemption has been calculated as at the earliest date ; in the case of other Stocks, as at the latest date.

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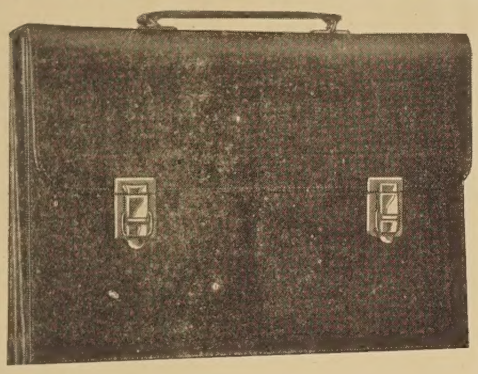

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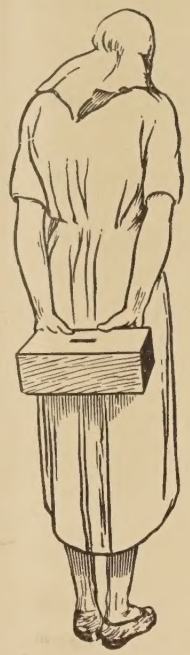

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